

# WORKERS' COMPENSATION

CALIFORNIA  
LAWYERS  
ASSOCIATION

*presents*

## **2023 Spring Education Conference**

MCLE: 6 Hours

Legal Specialization: 6 Hours in Workers' Compensation Specialization

Workers Compensation Claims and Immigration Exposures and Consequences  
Saturday, May 20, 2023  
9:40 a.m. – 10:40 a.m.

Speakers:

Faith Nouri, CFLS, Immigration and Family Law Attorney, Nouri Law Corporation  
Ruben Espinoza, Workers' Compensation and Immigration, Espinoza Law Group

### Conference Reference Materials

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# SPRING EDUCATION CONFERENCE

Newport Beach, CA

## NAVIGATING THE WORKER'S COMPENSATION CLAIMS OF NONCITIZENS

Ruben Espinoza of Espinoza Law Group

Faith Nouri of Nouri Law Corporation

# Issues Related to the Undocumented Injured Worker Obtaining Employment

- Use of identity documents by the undocumented worker to obtain employment as part of the I-9 employer verification process.
  - Knowingly using identity documents not issued lawfully or providing false attestation in the I-9 employer verification process may violate 18 USC 1546(b)
  - Violating 18 USC 1546(b) or giving false attestations regarding social security card may violate 42 USC 1546(b)(3) but is not considered a CIMT under Ninth Circuit Law (for now). *Beltran-Tirado v INS*, 213 F.3d 1179 (9<sup>th</sup> Cir. 2000); *see also Matter of Serna*, I&N Dec. 3188 (BIA 1992) (conviction for knowing possession of altered immigration document is not CIMT unless intent to use the document unlawfully is an element of the offense)
  - But aggravated identity theft may carry stiffer penalties: i.e., use, possession of or transfer of means of ID of another in connection with a crime is a felony. 18 USC 1028A. But Gvt. must show defendant knew the ID belonged to another person. *Flores-Figueroa v U.S.* 556 US 464( 2009).
- False Claim to US Citizenship carries stiff immigration penalties under the INA. After 1996, false claim to US citizenship is a ground of inadmissibility for which no waiver is available.

# Issues To Consider Once an Industrial Injury or Illness Occurs

- State Disability Benefits
  - An undocumented injured worker who has paid into the disability fund pursuant to UI Code §144 and UI Code §2626, who cannot work due to a mental or physical condition has the right to apply for state disability benefits. *Ayala v. Unemployment Insurance Appeals Board* (1976) 54, Cal. App.3d 676
- Undocumented Injured Employee's Workers' Comp. Benefits
  - 8 CCR 10455(e): An applicant is not required to disclose their social security number. If an applicant discloses their Social Security number on the application, the Social Security number will be used solely for identification and verification purposes in order to administer the workers' compensation system except with the consent of the applicant, or as permitted or required by statute, regulation or judicial order.
- Medical Care
  - Undocumented persons may qualify for non-emergency Medi-Cal if younger than 26 or older than 50, if they are currently or recently pregnant.

# Issues Unique to the Undocumented Injured Worker With a File History With Immigration Authorities

- Pre-existing Orders of Removal & Immigration Enforcement Concerns
- Concurrent Removal or Deportation Proceedings
  - Courthouses do not fall under ICE or CBP's previous policies concerning enforcement actions at or focused on sensitive locations, nor do they fall within the protected areas memorandum. However, the April 27, 2021, Memorandum from Tae Johnson, ICE Acting Director, and Troy Miller, CBP Acting Commissioner, entitled "Civil Immigration Enforcement Actions in or Near Courthouses" remains in effect. Enforcement actions at courthouses will only be executed in limited circumstances against individuals falling within the public safety priorities of DHS's civil immigration enforcement priorities. Such enforcement actions will, absent exigent circumstances, not lead to arrest of non-targeted individuals and will, wherever practicable, take place outside of public areas of the courthouse.
- Consular Processing Concerns
  - Exploring whether consular processing is available to an injured worker or waiver(s) can assist

# Issues Important to the Undocumented Injured Worker at Deposition

- Entry into US
- Immigration status
- Lawful employment
- Deportation, Removal or Absences from the US
- Re-entry after deportation
- Use of Illegal Substances
  - Illegal Immigration Reform and Immigration Responsibility Act of 1996
  - Convictions for Controlled Substances vs. State-legal controlled substances.



# Questions at Deposition That May be Relevant to a Noncitizen Applicant

- Questions about Country of Origin and Migration to USA
  - Opens the door to questions about immigration status or lawful ability to work in USA. Moreover, testifying to entering and departing the US may implicate grounds for inadmissibility for the undocumented worker, e.g., INA 212(a)(9)(C) a person re-entering or attempting to reenter without authorization after being unlawfully present for over one year is inadmissible for 10-years. Testimony regarding when the undocumented worker first migrated to the United States also implicate other forms of relief, e.g., 8 USC 1229b
- Direct Questions about immigration status
  - Lab. Code §1171.5(b): For purposes of enforcing state labor, employment, civil rights, consumer protection, and housing laws, a person's immigration status is irrelevant to the issue of liability, and in proceedings or discovery undertaken to enforce those state laws no inquiry shall be permitted into a person's immigration status unless the person seeking to make this inquiry has shown by clear and convincing evidence that the inquiry is necessary in order to comply with federal immigration law
- Criminal Activity
  - Bears directly on worker's eligibility for immigration benefits pursuant to INA 212, et seq.

# Questions at Deposition That May be Relevant to a Noncitizen Applicant

- False Claim to USC Law Post-September 30, 1996
  - Requires (1) Representation of US Citizenship; (2) Representation was False; (3) Made for any Purpose or Benefit Under the INA or ANY Federal or State Law
  - Includes representations made on voter registration, I-9, employment applications, etc.
- Testimony regarding controlled substances
  - For immigration consequences to apply, a conviction is not strictly necessary
    - E.g., evidence the Applicant is a drug abuser or addict makes him/her inadmissible to the United States under INA Section 212(a)(1)(A)(iv) – Health Related Ground of Inadmissibility. In practice, even admitting to smoking marijuana in the past could be grounds for being found inadmissible. To overcome grounds of addiction inadmissibility, a civil surgeon must find you are in remission from the addiction
    - E.g., trafficking related arrests may make the Applicant inadmissible under INA Section 212(a)(2)(C)(i) – reason to believe that a noncitizen has ever assisted in drug trafficking or been a drug trafficker



# Objections at Deposition That May Apply to the Noncitizen Client

Typical Grounds for Objection to Questions that May be Relevant to a Noncitizen:

- Lab. Code § 1171.5(b) & 3351(a): workers' comp system considers both documented and undocumented workers to be employees
- Evid. Code §§940, 913 and 5<sup>th</sup> [right against self-incrimination] Amendment to the US Constitution. *Zonver v Superior Court* (1969) 270 CalApp2d 613 [5<sup>th</sup> Amendment may be asserted in civil case]; *People v. Holloway* (2004) 33 Cal4th 96 [no adverse inference from assertion of 5<sup>th</sup> Amendment per Evid. Code §913]
- Right to privacy pursuant to Amendments 1 – 10 and 14 of the US Constitution as well as Art. 1, Sec. 1 of the California Constitution.
- Irrelevant and not reasonably calculated to lead to discovery of admissible evidence. *Farmers Brothers Coffee v WCAB* (2005) 133 Cal.App.4<sup>th</sup> 533
- 8 CCR 10455(e) regarding providing Social Security Number
- Conflicted Def. Atty.: counsel taking a position contrary to employer's interest if employer failed to verify employment eligibility thereby subjecting employer to prosecution under federal law

# Thinking Beyond the Workers' Comp Case: Assisting Non-Citizen Clients

- U Visa: U Visa is available to helpful victims of a qualifying crime
  - Qualifying Crimes: Abduction, Abusive Sexual Contact, Blackmail, Domestic Violence, Extortion, False Imprisonment, Felonious Assault, Incest, Involuntary Servitude, Kidnapping, Manslaughter, Murder, Obstruction of Justice, Peonage, Perjury, Sexual Exploitation, Rape, Torture, Slave Trade, Trafficking, Witness Tampering
  - In order to apply for a U Visa, you need to obtain a U Visa Certification (Form I-918B) from a Certifying Agency
  - A Certifying Agency can be any authority responsible for the investigation, prosecution, conviction, or sentencing of qualifying criminal activity, including Law Enforcement, Prosecutor's Office, Judges, Family Protective Services, Equal Employment Opportunity Commission, and Labor Departments
  - The key is that a Qualifying Crime must have occurred

# Thinking Beyond the Workers' Comp Case: Assisting Non-Citizen Clients

- SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)
  - Applicable to individuals under 21 who have been subject to abuse, abandonment, or neglect by one or both parents
  - Must have a valid juvenile court order issued by a state court which finds that the minor/ward is dependent on the court or in the custody of a state agency or department or an individual or entity appointment by the court
- Custody, Guardianship, Dependency, Delinquency
  - Court must also find that parental reunification is not viable
  - Finally, court must find it is not in the best interests of the minor/ward to return to their country of nationality or the parent's country of nationality or last habitual residence

# Thinking Beyond the Workers' Comp Case: Assisting Non-Citizen Clients

- 42B – CANCELLATION OF REMOVAL FOR CERTAIN NONPERMANENT RESIDENTS
  - Requirements:
    - 10 years of physical presence in the US
    - Not Convicted of Certain Crimes
    - Removal would result in exceptional and extremely unusual hardship to US citizen or Lawful Resident Spouse, parent or child (21 and under)
  - Only an Immigration Judge can grant this relief – Risk of Removal
  - Only 4,000 grants permitted per year
  - Generally, hardship to the applicant isn't a major factor, but it is considered especially under circumstances where the qualifying relative is greatly affected
  - Also, potential where a partner passes away and it becomes a situation where an individual is left to raise US citizen children alone
- Waivers (Misrepresentation and/or fraud, 3-10 yr bar, and prior criminal convictions)

# Thinking Beyond the Workers' Comp Case: Assisting Non-Citizen Clients

- Work Permit for Victims of Labor Law Violations
  - Biden-Admin Exec. Policy only
  - Requires the involvement of the victim in a local, state or federal agency investigation into the payment of substandard wages, unsafe working conditions or facilitating human trafficking or child exploitation and a showing of economic necessity
  - Requires a “statement of interest” letter by the labor or employment agency detailing the basics of the violation and the worker’s efforts or cooperation

## Questions and Comments?

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## **Ruben Espinoza**

Workers' Compensation and Immigration, Espinoza Law Group

Ruben Espinoza's practice is focused on workers' compensation and immigration. He represents workers' compensation claimants throughout Southern California, including in matters involving serious and willful as well as Labor Code 132a retaliation/discrimination claims.

In addition to his experience with work injury cases, Mr. Espinoza has represented immigrants from all over the world, at nearly all levels of immigration litigation, including USCIS, the Executive Office of Immigration Review, the Board of Immigration Appeals, U.S. District and Federal Circuit Courts of Appeal.

Mr. Espinoza's legal experience also includes handling public records litigation and employment law matters for public entities and businesses. Mr. Espinoza is a former Deputy City Attorney for the cities of Corona and Fontana, California.

Mr. Espinoza earned his bachelor's degree in political science from California Polytechnic University. He graduated with a Juris Doctorate from the University of California, Los Angeles School of Law.

Mr. Espinoza is a native and fluent Spanish-speaker. His experience and personal background as an immigrant and laborer in various industries, motivates and informs his dedication to his clients.

Mr. Espinoza was rated a "Rising Star" by Super Lawyers in 2020. He was voted a "Top Attorney", most recently, in 2022, as published in Pasadena Magazine.



**Faith Nouri, CFLS**

Nouri Law Corporation

Faith Nouri is a principal attorney at Nouri Law Corporation and has a dual license to practice law in the U.S. and Canada. Ms. Nouri represents clients from 26 countries and handles California contested family law and international abduction issues, as well as U.S. and Canadian immigration and cross-border issues, including inadmissibility into each country. She is the Past Executive Committee member and Chair for L.A. County Bar Association, Immigration Section and an Officer of the American Immigration Lawyers Association for Southern California. Ms. Nouri established a liaison with the Los Angeles Directors and was the representative of local associations for number of years with the Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) agencies upon formation of the Department of Homeland Security, post 9/11. She is a Family Law Specialist, designated by the State Bar of California; Minor's Counsel in both Orange County and Los Angeles County Superior Courts; certified mediator with training from the Straus Institute for Dispute Resolution, Pepperdine School of Law; and certified Collaborative Divorce Attorney as designated by the Collaborative Divorce Institute of Phoenix, Arizona. She also assists the Superior Court of California as a Mediator.

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