



# Joseph Law Firm<sup>PC</sup>

Immigration Law Specialists

Newsletter

May/June 2017

## FIRM NEWS



### ERIC FISHER OF-COUNSEL AT JOSEPH LAW FIRM IN FRISCO, COLORADO

Joseph Law Firm, P.C. (JLF) is excited to announce that Eric Fisher, long time immigration attorney in Frisco, Colorado, will be joining JLF as Of-Counsel. Eric will work on behalf of JLF and our clients to provide the highest quality and personalized legal services to individuals, families and businesses in Summit County, Eagle County, and throughout the Western Slope of Colorado. Our new office location and phone number is:

**619 Main Street, Frisco, CO 80443  
970-446-7884.**

### PRO BONO: NEW DEVELOPMENTS IN SANCTUARY CASE FOR JLF CLIENT

Jeff Joseph, Senior Partner of Joseph Law Firm, P.C., recently had a victory in a pro bono case for his client, who was in sanctuary in a church in Denver, Colorado.

Ingrid Encalada is from Peru. She entered the United States at age 17 and is now 33. She has two U.S. citizen children, an 8-year-old and an 18-month-old. In 2010, she was arrested for using false documents. On the advice of her attorney, she pled guilty to criminal impersonation, which made her deportable and ineligible for cancellation of removal. She appealed the case, but the appeal was dismissed in 2016. She then hired another attorney to try and withdraw her guilty plea. That attorney failed to show up for the hearing and the judge denied her post-conviction motion to withdraw her guilty plea. She filed a stay with U.S. Immigration and Customs Enforcement that was denied. Because she was subject to a final order and the stay was denied, she entered sanctuary in a Quaker church and remained there for 5 months.

Joseph Law Firm agreed to take her case pro bono. On May 3, 2017, Ingrid had her first hearing with the criminal court. The purpose of this hearing was to prove that her second attorney was ineffective when he failed to show in court. The judge granted this motion and found that the previous attorney was in contempt. Attending this hearing meant that Ingrid had to come out of sanctuary. It took a lot of courage knowing she could be arrested and sent back to Peru. But it was successful. There will be another hearing on whether her initial attorney was ineffective when he recommended the plea to criminal impersonation.

Because of her success on this initial post-conviction motion, ICE has granted Ingrid a temporary stay of removal until her next court hearing. This stay allows her to come out of sanctuary safely and without fear of being deported. This case has made national news.



*Jeff Joseph speaking at Ingrid's press conference.*

## JENNIFER HOWARD, ASSOCIATE ATTORNEY, JOINS JOSEPH LAW FIRM

Jennifer Howard joined Joseph Law Firm in March as an Associate Attorney. Jennifer is a graduate of the Mercer University Walter F. George School of Law. After earning her undergraduate degrees in Political Science and Psychology and a Master of Business Administration degree from Georgia College & State University, she obtained a Master of Laws in International Law degree from the University of San Diego School of Law. As an undergraduate student, Ms. Howard studied in Moldova, Romania, and Hungary; and she returned to Europe as a graduate law student to study international human rights and comparative law at the Columbia Global Centers in Paris, France. Ms. Howard is trilingual in English, Spanish, and Sign Language; and she reads and writes French.



Ms. Howard's past experience merged immigration, human and civil rights, environmental protection and social justice, youth education and development, animal welfare, and public interest law to create lasting healthy communities. Prior to joining Joseph Law Firm, P.C., Ms. Howard interned with the University of San Diego's immigration legal clinic, providing family-based immigration assistance to the clinic's low-income clients. Ms. Howard also volunteered with the Junior League of San Diego as a Legislative Liaison and with San Diego County's Human Trafficking Task Force, where she worked as a community and policy advocate for human trafficking victims and transition-age foster youth. Ultimately, her passion for immigration law, human rights, and public service led her to Denver and to Joseph Law Firm.

Ms. Howard is a volunteer attorney with the Colorado Lawyers Committee's Denver Legal Nights, the Rocky Mountain Immigration Advocacy Network (RMIAN), and the American Civil Liberties Union (ACLU) of Colorado. In 2016, she founded The Colossus Project, seeking to empower survivors of human trafficking and gender-based violence to achieve integrated quality of life and communal purpose through trauma-sensitive yoga, expressive arts, and wilderness-based healing. Ms. Howard is also a member of the American Immigration Lawyers Association (AILA), the Colorado Bar Association (CBA) Immigration Section and Young Lawyers Division, and the Denver Bar Association (DBA) Young Lawyers Division.

In her spare time, Ms. Howard enjoys traveling, cooking, practicing yoga, and exploring the arts and the outdoors with her dog, Odin.

### IMMIGRATION NEWS

## SPENDING BILL EXTENDS EB-5 INVESTOR VISA PROGRAM TO SEPTEMBER 30; NO FUNDING FOR WALL

The Consolidated Appropriations Act of 2017, passed by Congress and signed May 7, extends the EB-5 immigrant investor visa program through September 30, 2017. The legislation also provides a large border-security funding increase, among other things.

The spending bill was also notable for what it didn't contain. For example, the bill did not include funding to begin construction of the border wall promised by President Trump.

Some observers believe that before that date, legislation could be enacted to change the EB-5 program, such as by raising the minimum investment amount, which currently is \$500,000 in rural and high unemployment areas and \$1 million elsewhere. The EB-5 program has received a lot of attention recently because of a particular EB-5 project in New Jersey being promoted by the Kushner Company. Jared Kushner, President Trump's son-in-law and a senior advisor to the President, stepped down as chief executive of the Kushner Company in January and has sold stakes in several properties to help allay concerns about possible conflicts of interest.

## H2-B CAP REACHED FOR FY 2017 IN LESS THAN SIX MONTHS

*Contributed by Alex McShiras, Associate Attorney in Colorado Springs*

The H-2B cap for Fiscal Year 2017 (October 1, 2016 - September 30, 2017) was reached on March 13, 2017 (in less than six months). From January 1-7, 2017, the Department of Labor (DOL) received 2,971 applications requesting more than 51,000 positions for the 33,000 H-2B visas available for the second half of the fiscal year. Factors contributing to the early exhaustion of H-2B numbers included Congress' failure to include the returning worker exemption provision in December 2016. Also, DOL allowed a small number of H-2B petitions that were pending when the H-2B cap for the first half of the fiscal year was reached to amend their start date to April 1st. According to DOL, only those whose original start date was March 18-31 were allowed to do this, but it is unclear how many petitions were involved. That took some visas away from the second half. The most important factor is that U.S. employers have a much greater need for H-2B workers than the artificial 66,000 visa cap set by Congress.

There are a few categories of H2-B workers who are exempt from the H2-B cap:

- Workers who have already been counted against the 2017 cap.
- Current H2-B workers in the United States who are petitioning to extend their stay.
- Fish roe processors, technicians, or supervisors.
- Workers performing labor or services from Guam or the Commonwealth of Northern Mariana Islands (this lasts until December 31, 2019).

Despite this grim news, there are two glimmers of hope. First, additional H2-B numbers could be released. Or, there is a small chance of legislative relief. This year, Congress provided the possibility of cap relief if the Department of Homeland Security determines that the needs of American businesses cannot be satisfied by American workers. This relief is limited by not more than the highest number of H-2B nonimmigrants who participated in the returning worker program in any year in which returning workers were exempt from such numerical limitation.

Joseph Law Firm is monitoring the situation closely and will continue to share information on this subject when more information becomes available. If you have any questions, please call our office.

## DENVER REFORMS CRIMINAL SENTENCES TO PROTECT LOW LEVEL OFFENDERS FROM DEPORTATION

*Contributed by Aaron Hall, Partner*

The maximum possible sentence for a criminal offense often impacts the potential immigration consequences for conviction. In particular, whether an offense has the potential to render a noncitizen deportable may depend on whether the maximum possible sentence is one year or longer under 8 U.S.C. § 1227(a)(2)(A)(i). Until now, Denver municipal offenses generally carried a maximum possible sentence of 365 days, meaning that many low level offenses had the potential to trigger deportation, even for those who are in lawful immigration status.

This week, the city of Denver announced sentencing reforms which seek to alleviate deportation concerns for many low level offenders. Under the new sentencing structure, the penalties will be as follows:

- For minor crimes (urinating in public, violating park curfew, encumbrances) the maximum penalty would be 60 days;
- For most crimes the maximum sentence would be 300 days;
- For violent crimes (multiple domestic violence, sex crimes and serious injury) the sentence would be a maximum of 365 days.

These reforms are only applicable to violations of the Denver Municipal Code—not to violations of state statute. Also, it is important to note that many immigration consequences flowing from criminal convictions are not dependent on the maximum possible sentence. So while these reforms are welcome and important, it remains as important as ever that any noncitizen charged with any crime consult with a qualified immigration attorney before entering any guilty plea to a criminal charge.



## **SPENDING BILL INCLUDES RELIEF AND INCREASED NUMBERS FOR H2B EMPLOYERS**

*Contributed by Jeff Joseph, Senior Partner*

Congress has reached a bipartisan agreement on a bill to fund the federal government through September 30, 2017, which includes some limited H-2B cap relief. The bill provides the Secretary of Homeland Security, in consultation with the Secretary of Labor, the authority to raise the H-2B cap when he determines that there is an economic need. It limits the total number of H-2B workers to that may enter the U.S. during fiscal 2017 to 129,547, which corresponds to the number of new and returning H-2B workers admitted to the U.S. in fiscal 2007. It's now up to DHS to implement the provisions of the bill.

The bill also contains the language from last year limiting the Administration's ability to enforce the corresponding employment and 3/4 guarantee language of the 2015 regulations, allowing for the use of private wage surveys, a 10 month season and staggered crossing for seafood workers.

## **SAN FRANCISCO FEDERAL COURT JUDGE ISSUES PRELIMINARY INJUNCTION AGAINST "SANCTUARY CITY" PORTION OF EXECUTIVE ORDER**

*Contributed by Courtney Butler, Associate Attorney*

A federal district court judge in the United States District Court for the Northern District of California has issued a nationwide preliminary injunction blocking the enforcement of President Trump's executive order targeting "sanctuary cities." This is the second successful legal challenge to Trump's executive order, after several federal court injunctions were issued against the travel ban that targeted citizens of seven primarily Muslim countries.

The term "sanctuary city" is commonly used to describe cities that limit the involvement of their police officials with federal immigration enforcement. President Trump's executive order threatened to withhold federal funding from cities that implement such a policy, contending that such efforts harm public safety and prevent deportation of those unlawfully present in the United States. Cities such as San Francisco, New York, and Los Angeles have promised to fight the executive order. Although varying in their degree of willingness to label themselves as sanctuary cities, Boulder, Denver, and Aurora have promised not to require local police to enforce federal immigration laws.

The court decision, issued by Judge William H. Orrick, finds that the executive order is likely unconstitutional because it is too vague. It also finds that the order likely violates the Fifth Amendment to the Constitution, as it would deprive cities from federal funds that are rightly theirs. Finally, the decision finds that the executive order likely violates the separation of powers provision found in the Tenth Amendment. Other lawsuits regarding the sanctuary city portion of President Trump's executive order are pending in cities in Massachusetts, Washington, and elsewhere in California.



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