



Proceedings in Immigration Court: The Removal Process and Applications for Relief (ILCP 60300)

Course Description: This course will cover in what happens once a non-citizen has been charged and placed in immigration removal proceedings (formerly called deportation proceedings). The student will study each step of the proceeding, with the choices that the client and her representative must make in the effort to avoid removal: responding to the charges and putting the government to its proof; determining the client's immigration history; determining the client's eligibility for any relief from removal; preparing a winning case on paper; preparing the client and other witnesses to testify; what options are available for appeal and the requirements for filing a motion to reopen. The course will cover the legal standards and the preparation of the following applications for relief: cancellation of removal, Violence Against Women Act (VAWA) cancellation of removal, and asylum relief along with withholding of removal and relief under the Convention Against Torture. Given that recent developments have greatly increased the complexity of asylum law, the course will cover this area in depth. The course will also briefly cover adjustment of status and voluntary departure. The course will not emphasize courtroom skills; however, we plan to arrange a visit for the class to Immigration Court near the middle of the semester. In addition, the skills necessary to prepare court cases will be emphasized throughout the course, with class discussion and exercises.

Target audience: The target audience is 1) paralegals who assist attorneys with removal defense cases (handling client interviews to develop affidavits in support of relief, working with other witnesses to develop affidavits, preparing client and witnesses to testify, putting together packages of supporting documents), 2) non-lawyer representatives working for non-profit agencies who will handle preparation of removal defense cases and representation in court, and 3) attorneys from both not-for-profit and private law service providers seeking an introduction to representation in removal proceedings.

Prerequisite: Introduction to Immigration Law or five years experience with the field of immigration law.

TEXTS:

Aleinikoff, T. Alexander, David A. Martin and Hiroshi Motomura. *Aleinikoff, Martin, & Motomura's Immigration and Citizenship: Process and Policy*, 5th ed. 2003. Eagan, MN: West Publishing.

Boswell, Richard A. *Immigration and Nationality Law*, 3rd ed. 2000. Durham, NC: Carolina Academic Press.

Musalo, Karen, Jennifer Moore & Richard A. Boswell, *Refugee Law and Policy, a Comparative and International Approach*, 2nd ed., 2002. Durham, NC: Carolina Academic Press.

NY State Defenders Association, Immigrant Defense Project, *Representing Noncitizen Criminal Defendants in New York State*, (2003 ed.)

Week 1: **Review of immigration basics.** Immigrant and non-immigrant visas, the permanent residence application process, maintaining lawful status. The students will refresh their understanding of the basics of U.S. immigration law, including key vocabulary.

READINGS:

Boswell, Ch. 7, Family-Based Immigrants, pp. 449-454
Ch. 9, Permanent Residency for Persons Already in the U.S., 551-565, 570-580

Week 2: **Anatomy of a removal case.** Grounds of Removability. How to respond to the charges. Once a noncitizen is placed in immigration court proceedings it is necessary to evaluate the charges against her or him and devise a strategy for obtaining relief, if possible. The student will study and analyze the most common charges and will be trained to assess their validity. Students will also learn the procedures in immigration court proceedings.

READINGS:

Boswell, Ch. 4, Removal after Admission or Entry, pp. 179-194, 250-252
Aleinikoff, Ch. 6, Deportability and Relief from Removal, pp. 550-556, 567-570, 576-580

Week 3: **Anatomy of the airport inspection and expedited removal cases.** Grounds of Inadmissibility. When noncitizens arrive at a U.S. port of entry to seek admission to the United States they face a number of security checks and other hurdles before they may be admitted. The inspecting officer for immigration must be satisfied that the noncitizen is admissible. Students will learn the grounds of inadmissibility and how to analyze charges of inadmissibility. Students will place them selves in the role of the inspecting officer in order to more fully understand the admission procedure.

READINGS:

Boswell, Ch. 3, Admissibility and Removal, pp. 101-107, 121-126, 146-159, 174-178
Aleinikoff, Ch. 4, Admissions: Qualifying Categories and Grounds of Inadmissibility, pp. 427-443
Ch. 5, Admission Procedures, pp. 453-457, 497-501, 509-515, 522-528

Week 4: **Analysis of criminal convictions and the immigration consequences.** For aggravated felonies, crimes of moral turpitude, crimes of domestic violence, controlled substance offenses, and juvenile convictions. The distinction between aggravated felonies and petty offenses (misdemeanors). How to analyze your client convictions for immigration consequences. When a noncitizen has been convicted of a crime, s/he faces problems with both admissibility and deportability. This complex area requires focused, in-depth legal analysis. This week the class will analyze the elements of the immigration provisions relating to crimes, as well as the elements of the crimes in the penal code. Students will to gain an understanding of the immigration concepts of aggravated felonies, crimes of moral turpitude, and crimes of domestic violence.

READINGS:

NYSDA Manual, pp. 1-3 through 1-8, 2-15 through 2-23, 5-2 through 5-3, 5-13 through 5-16
Boswell, Ch. 10, Relief from, and Amelioration of Grounds of Removal, pp. 656-684

Week 5: Detention. Statutory authority to detain, challenges to detention in both removal cases and expedited removal cases. When to file a challenge and put together a package of supporting documents. The noncitizen who is either inadmissible or deportable may be placed in immigration detention during the pendency of the proceedings against him or her. Students will analyze the threshold criteria which either mandate detention, or allow the ICE to detain the noncitizen. Students will also learn the criteria for release, as well as the procedure for requesting release.

READINGS:

Boswell, Ch. 3, Admissibility and Removal, pp. 126-145
Aleinikoff, Ch. 5, Admission Procedures, pp. 506-509
Musalo, Ch. 12, The Process and Rights of Asylum Seekers, pp. 800-814

Week 6: Applications for relief from removal. Overview of cancellation of removal, VAWA (Violence Against Women Act) cancellation of removal, asylum, adjustment of status to permanent residence, voluntary departure. Once it is established that the government has proven deportability, in order to avoid removal the noncitizen must make a successful application for relief. This may include adjustment of status if the noncitizen has the eligibility to adjust so students will learn the criteria for adjustment. Students will learn the basic elements of the following important applications for relief: asylum, and cancellation of removal for noncitizens in three categories, LPR's (lawful permanent residents) non-LPR's, and under the VAWA.

READINGS:

Boswell, Ch. 10, Relief from, and Amelioration of Grounds of Removal, pp. 617-622
Aleinikoff, Ch. 6, Deportability and Relief from Removal, pp. 582-598, 609-611

Week 7: Cancellation of removal. Analysis of the legal elements, how to develop evidence in support of application and organize documents for the court. The successful presentation of a case in immigration court involves copious document gathering and digesting. It is necessary to present evidence to satisfy each of the legal elements of a claim for relief. Students will learn how to collect evidence to satisfy the elements of cancellation of removal, and how to compile and digest documents. Students will begin their study of witness testimony.

READINGS:

Boswell, Ch. 10, Relief from and Amelioration of Grounds of Removal, pp. 625-656
Aleinikoff, Ch. 6, Deportability and Relief from Removal, pp. 582-600

Week 8: VAWA cancellation of removal. Analysis of the legal elements, how to develop evidence in support of application and organize documents for the court. The successful presentation of a VAWA cancellation case involves proving a more complex set of legal elements than ordinary cancellation of removal. Students will revisit the process of collecting evidence,

digesting it, and presenting it to the court in the manner that best presents the case. Students will consider some of the challenges in preparing reluctant or traumatized witnesses to testify.

READINGS:

CUNY School of Law Immigrant Initiatives, most recent edition of training materials on VAWA cancellation of removal

Week 9: Mid-term, visit to Immigration Court.

Week 10: Discussion of mid-term. Overview of Asylum Law. International foundations of the law, legal standard for non-refoulement (known as withholding of removal in U.S. law). It appears as though there are more applications for asylum than for any other type of relief in immigration court. The rich body of asylum law initially developed out of the international treaty obligations of the U.S. Students will study the distinctions between a grant of asylum and the order of the judge withholding removal to a country where the noncitizen is likely to be persecuted.

READINGS:

Musalo, Ch. 2, International Norms and State Practice, pp. 135-146, skim pp. 61-79
Ch. 3, Degrees of Risk: The Standard of Proof in Claims for Protection, pp. 147-160

Week 11: Asylum Law – Part I. Legal standard, definition of persecution, past persecution, well-founded fear of future persecution. Analyzing the law and developing your client affidavit. Persecution takes many forms, and the applicant may fear persecution from a variety of perpetrators. Students will learn the legal standards relating to persecution, and practice interviewing techniques best designed to elicit relevant information from your client in this subject area.

READINGS:

Musalo, Ch. 3, Degrees of Risk: The Standard of Proof In Claims for Protection, pp. 160-196, 204-208
Ch. 4, Definition of Persecution, pp. 223-230, 236-248, 263-270

Week 12: Asylum Law – Part II. The nexus to one of the five protected grounds, with legal standards for the grounds of political opinion, both imputed and actual, religion, race, ethnicity. Analyzing the law and developing your client affidavit. A grant of asylum requires not only persecution, but also that the perpetrator was motivated by the appearance of a protected characteristic in the victim. Students will learn the protected characteristics, as well as important developments in the law pertaining to the "nexus" requirement. Students will further develop and practice techniques for fleshing out your client's affidavit with the type of detail that enhances his or her client's credibility.

READINGS:

Musalo, Ch. 5, The Nexus Requirement, pp. 275-276, 296-324

Ch. 6, Persecution on Account of Political Opinion, pp. 341-347, 358-376, 409-415

Week 13: Asylum Law – Part III. Legal standard for the ground of particular social group, including gender and sexual orientation. The importance of credibility in asylum cases and recent case law on this issue. Developing your client affidavit and additional supporting evidence. Recent case law has set stringent new requirements for corroborative evidence in asylum cases, which the practitioner must take into account in the preparation of the case. Students will learn about recent developments in this area, and will study the most recent developments in asylum grants based on gender and sexual orientation. Students will learn which documents are appropriate for supporting these claims.

READINGS:

Musalo, Ch. 9, Persecution Based on Membership in a Particular Social Group, pp. 547-561, 562-603

Week 14: Asylum Law – Part IV. Special considerations when interviewing clients who are survivors of torture, or who suffer from Post Traumatic Stress Disorder. Procedures when applying for asylum the airport, the Asylum Office, Immigration Court. Preparing the asylum application with supporting documents for presentation. The successful outcome of an asylum application depends on understanding the procedure involved and what the adjudicator is looking for. Students will learn the specifics of asylum procedures in different forums. Students will learn the final steps in preparing the case for presentation, and in preparing a client for testimony, particularly when dealing with a client who is a survivor of torture or a sufferer of PTSD.

READINGS:

Musalo, Ch. 13, Proving the Claim, pp. 845-895

Week 15: Convention Against Torture. Legal standard and how it differs from asylum and withholding of removal. Motions to reopen: deadlines, legal standards. Appeals to Board of Immigration Appeals and Circuit Courts: deadlines, legal standard. In spite of the lawyer's best efforts, an Immigration Judge may well deny relief to a noncitizen applicant. The representative must be prepared to file appeals, including motions to reopen, within the statutory deadlines. The student will learn the standards for review of the Immigration Judge's decision, and how to compute the various filing deadlines involved. In this context we will also study relief under the Convention Against Torture, and the legal standards involved in making a motion to reopen based on changed circumstances, in cases of asylum, withholding of removal, and relief under the Convention Against Torture.

READINGS:

Boswell, Ch. 12, Administrative Appeals and Judicial Review, pp. 781-848
Musalo, Ch. 5, The Nexus Requirement, pp. 324-332

Course Requirements: One in-class midterm, one take-home final.