



INTRODUCTION TO THE PRACTICE OF IMMIGRATION LAW

Attorney Brittnee Pankey Qualls, Esq.
Qualls Law LLC

OVERVIEW

- The Where, and What of Immigration Law
- A Day in the Life of an Immigration Attorney
- Common Struggles of the Practice

THE WHERE

Homeland Security Act of 2002.

- There is no more INS!!!!

The US Department of Homeland Security

- United States Citizenship and Immigration Services ("USCIS")
- Administrative Appeals Office
- U.S. Immigration and Customs Enforcement's ("ICE")

The US Department of Justice

- The Executive Office for Immigration Review ("EOIR")
 - Immigration Courts
 - Board of Appeals

The Department of State

- US Consulates

THE WHAT

Immigration Naturalization Act (8 U.S. Code Chapter 12)

INA sec. 101 (8 U.S. Code § 1101)

- Definitions

Types of Immigration Practice

- Family
 - Ex. Marriage Based Permanent Residence
- Naturalization
- Humanitarian
 - Ex. Asylum
- Removal
- Employment
 - Ex. H-1B

A DAY IN THE LIFE OF AN IMMIGRATION ATTORNEY

My Practice

- Naturalization
 - Medical Waivers
- Permanent Residence
 - Family Based
 - Refugees
 - Asylees
- Removal
- Other
 - Nonimmigrant Visas
 - Employment Visas

A DAY IN THE LIFE OF AN IMMIGRATION ATTORNEY

EVERY DAY IS DIFFERENT

- **Consultations**
- **EOIR**
 - Removal Hearings
 - Master
 - Individual
 - Preparing Applications
 - Research
 - Evidence Collection
 - Client preparation
- **USCIS**
 - Application Preparation
 - Interviews
 - Replying to RFEs
- **Consular Processing**
 - Submitting applications
 - DS-160
 - DS-260
 - Submitting Fees
 - Submitting documents
 - Contacting National Visa Center
 - Contacting Consulate
 - Research
 - Client Preparation

COMMON STRUGGLES IN THE PRACTICE

Constant Change

Pricing & Collection

Heavy Discretion

Administrative Practice

- Rule of Evidence “kind of” apply
- Neutral Decision Makers

Article III Courts

EXAMPLE: NIZ-CHAVEZ V. GARLAND, 593 U.S. ____ (2021).

- Due Process Requirements
 - 5th Amendment
 - 14th Amendment
 - Notice, the opportunity to be heard, and a decision by a neutral decision-maker
- Notice to Appear
 - Notice of Hearing
- Cancellation of Removal
- Stop Time Rule

U.S. Department of Homeland Security Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: _____ FIN #: _____ File No: A
SIGMA Event: _____ DOB: _____ Event No: ZHO

In the Matter of: _____ currently residing at:
Respondent: _____
(Number, street, city and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.
☐ 2. You are an alien present in the United States who has not been admitted or paroled.
☒ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of Venezuela and a citizen of Venezuela;
3. On or about September 30, 2005 you were admitted to the United States as a lawful permanent resident alien (E10);
4. On or about _____ 2018 you were convicted in the _____ County Court in Texas for the offense of Possession of Marijuana Less Than Two Ounces;
5. On or about December 25, 2018, you arrived at the George Bush Intercontinental Airport in Houston, Texas and applied for admission to the United States as a returning lawful permanent resident alien.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:
See Continuation Page Made a Part Hereof

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30(f)(2) ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:
1801 SMITH STREET 9TH FLOOR Houston TEXAS 08 77002

(Complete Address of Immigration Court, including Room Number, if any)

on a date to be set at a time to be set to show why you should not be removed from the United States based on the charge(s) set forth above.
(Date) (Time)

Date: December 26, 2018 HOUSTON, TX
(City and State)

(Signature and Title of Issuing Officer)

See reverse for important information Form I-862 (Rev. 08)

INA § 239-INITIATION OF REMOVAL PROCEEDINGS (8 U.S. CODE § 1229)

(a) Notice to Appear

(1) In general.-In removal proceedings under section 240, written notice (in this section referred to as a "notice to appear") shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying the following:

(A) The nature of the proceedings against the alien.

(B) The legal authority under which the proceedings are conducted.

(C) The acts or conduct alleged to be in violation of law.

(D) The charges against the alien and the statutory provisions alleged to have been violated.

...

(G) (i) The time and place at which the proceedings will be held.

NIZ-CHAVEZ V. GARLAND (CONTINUED)

- *Pereira v. Sessions*, 138 S. Ct. 2105 (2018).
 - 8 C.F.R. § 1003.14(a), which states that “[j]urisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by [DHS].” Practitioners argued that an NTA—the “charging document,” see 8 C.F.R. § 1003.13—that lacks time or place information “is not a ‘notice to appear under section 1229(a),’” *Pereira*, 138 S. Ct. at 2110, and thus does not vest jurisdiction in the immigration court pursuant to 8 C.F.R. § 1003.14(a).
- If the NTA is not valid then proceedings were not initiated, right?
- The BIA disagreed.

MATTER OF MENDOZA-HERNANDEZ & CAPULA CORTEZ, 27 I&N DEC. 520 (BIA 2019).

- “We conclude that in cases where a notice to appear does not specify the time or place of an alien’s initial removal hearing, the subsequent service of a notice of hearing containing that information perfects the deficient notice to appear, triggers the “stop-time” rule, and ends the alien’s period of continuous residence or physical presence in the United States.”
- Circuit Split
 - Third and Tenth Circuits ruling that only a statutorily compliant NTA could stop time
 - Fifth and Sixth Circuits agreeing with the BIA

NIZ-CHAVEZ V. GARLAND (CONTINUED)

- Holding: A notice to appear sufficient to trigger the IIRIRA's stop-time rule is a single document containing all the information about an individual's removal hearing specified in §1229(a)(1).
- Termination
- Motion to Reopen
- "Fake" Hearing dates
- Still "To be determined"
- Application differs by IJ

RESOURCES

- American Immigration Lawyers Association
 - AILA.org
- American Immigration Council
 - <https://www.americanimmigrationcouncil.org/>
- EOIR Immigration Court Online Resource
 - <https://icor.eoir.justice.gov/en/model-hearing-program/>
- Immigration Justice Campaign
 - <https://immigrationjustice.us/>
- CENTER FOR GENDER AND REFUGEE STUDIES
 - <https://cgrs.uchastings.edu/>

CONTACT INFORMATION

Brittnee@Quallslawllc.com

614-859-2270

