



NASABA

Quarterly

NORTH AMERICAN SOUTH ASIAN BAR ASSOCIATION

SPRING
10

Do You Have a Green Card?

The U.S. Supreme Court Suggests You Should Get Your Citizenship Or Else Get Deported

By Shashank Upadhye

Recently the U.S. Supreme Court ruled in *Padilla v. Kentucky* that under the Sixth Amendment, criminal defendants require warnings that a guilty plea to a crime might have the collateral effect of deportation. The effect of this case is two-fold for counsel: (i) advise clients per the Court's *Padilla Warning*; and (ii) advise clients that obtaining citizenship is the best tool to avoid deportation.

Problematically, many immigrants stay on "green card" landed resident status for years or decades. They never convert to full citizenship.

Jose Padilla (not the infamous terrorist) got convicted for transporting pot. Nobody denies that Padilla had the pot. Certainly there is no excuse for this and no one defends his actions. Padilla, on advice of his counsel, however, Padilla pled guilty to drug possession, which is a deportable offense. Padilla, a legal green card holder, lived in the U.S. for some 40 years. He is a Vietnam vet; he fought for this country. Strangely (which we will see is actually very normal to some people) he never became a U.S. citizen. The Supreme Court case had to do with (in effect) whether his lawyer gave him bad advice by telling Padilla that it would be OK to plead guilty, that if he did so he would not be deported, and that his long term tenure in the U.S. would help keep from deportation. The case itself is remarkable for other reasons in that one can presuppose that there will be so-called *Padilla Warnings* needed like Miranda warnings. We will wait and see.

J. Stevens wrote that in imposing the requirement to warn plea agreements may be more meaningful and may become more frequent. *Padilla v. Kentucky*, 2010 WL 1222274, *10 (March 31, 2010) ("Finally, informed consideration of possible deportation can only benefit both the State and noncitizen defendants during the plea-bargaining process. By bringing deportation consequences into this process, the defense and prosecution may well be able to reach agreements that better satisfy the interests of both parties. As in this case, a criminal episode may provide the basis for multiple charges, of which only a subset mandate deportation following

IN THIS ISSUE	
Do You Have a Green Card?	1
Switching Practices	3
South Asian Women Attorneys Network	4
President's Letter	5

conviction. Counsel who possess the most rudimentary understanding of the deportation consequences of a particular criminal offense may be able to plea bargain creatively with the prosecutor in order to craft a conviction and sentence that reduce the likelihood of deportation, as by avoiding a conviction for an offense that automatically triggers the removal consequence. At the same time, the threat of deportation may provide the defendant with a powerful incentive to plead guilty to an offense that does not mandate that penalty in exchange for a dismissal of a charge that does.”).

Alito and Roberts (J., CJ) concurred that the *Padilla Warning* was required but questioned who has to give those warnings: “regular” criminal defense counsel or specialized immigration lawyers. “I concur in the judgment because a criminal defense attorney fails to provide effective assistance within the meaning of *Strickland v. Washington*, if the attorney misleads a noncitizen client regarding the removal consequences of a conviction. In my view, such an attorney must (1) refrain from unreasonably providing incorrect advice and (2) advise the defendant that a criminal conviction may have adverse immigration consequences and that, if the alien wants advice on this issue, the alien should consult an immigration attorney. I do not agree with the Court that the attorney must attempt to explain what those consequences may be. As the Court concedes, “[i]mmigration law can be complex”; “it is a legal specialty of its own”; and “[s]ome members of the bar who represent clients facing criminal charges, in either state or federal court or both, may not be well versed in it.” The Court nevertheless holds that a criminal defense attorney must provide advice in this specialized area in those cases in which the law is “succinct and straightforward”-but not, perhaps, in other situations. This vague, halfway test will lead to much confusion and needless litigation.” *Padilla*, 2010 WL 1222274, at *11.

The dissent of Scalia and Thomas (JJ) basically stated that although the goal of giving immigration warnings is desirable, the Sixth Amendment does not require it. Moreover, they suspect that satellite litigation will consume the courts as the scope, content, and adequacy of *Padilla Warnings* play out.

The Bottom Line: Counsel should always advise clients about the need, indeed requirement, to convert from green card status to citizenship. Most people and counsel don't know for sure when a certain crime is a deportable offense. What is deportable in one State may not be a deportable offense in another. Once upon a time the list of offenses was small; today they are numerous. Obvious crimes are violent crimes, less obvious ones are crimes of moral turpitude (where the fraud or honesty of the person is in issue). Crimes that have no victims may also be deportable.

We all hear arguments as to why someone never bothers to switch over to citizenship. Some are emotional ones (I live here in the U.S. and my other citizenship is my last “tie” to the homeland...). Some are smartly economic (I have a lot of property in the homeland and I cannot own it if I am not a citizen there; or that if I give up my homeland citizenship, I lose my right to inherit property). Some are just dumb (If I give up the other citizenship, then I have to pay for the visa fee to visit the homeland). My view is simple: you live in the U.S., you enjoy its benefits, get the citizenship to enjoy more benefits and avoid further problems.

Shashank Upadhye is Vice President - Global Intellectual Property at Apotex, Inc. Shashank is a U.S. citizen and became a U.S. Citizen as soon as he could. Disclaimer: this is not legal advice. Go hire your own attorney.

Switching Practices: Where Persistence Meets Planning and Luck

By Tarun Chandran

Making a career transition is a daunting prospect. Whether you've been working for a year or twenty years, changing jobs almost certainly means a disruption in your life and requires a period of adjustment to new circumstances. Making a career transition as a lawyer is particularly daunting – you not only have to deal with issues specific to our profession such as client conflicts, but also with the fact that, as a profession, we tend to be very specialized and moving outside that specialization is difficult. Difficult, but certainly not impossible. I began my career as a litigator. Law school had trained me almost exclusively to be a litigator and my sole exposure to the actual practice of law prior to graduation – three and a half months as a summer associate in a large law firm – was also tilted towards litigation. While my litigation practice was interesting, and while litigation was certainly what I envisioned myself practicing when I first thought about becoming a lawyer, I determined about two years into my career that litigation was not the best fit for me. So, I went through a process that I probably should have gone through while still in law school – I thought about the various areas of practice in law and tried to determine the best fit for me. I decided that my best fit was real estate law.

Finding a job in real estate after two years in litigation took a lot of persistence and a little bit of luck. When you are making a transition like I was, you need to be absolutely sure about the fact that you want to make a change, be convincing when people ask you if you are absolutely sure that you want to make a change, and be able to articulate why you are sure that you will be able to make a change successfully. When I was interviewing for real estate jobs, I needed to convince the lawyers with whom I was interviewing that I would be a good fit for their firm and practice despite having no real

estate experience. That meant convincing them that my potential in the practice of real estate law made me a worthwhile investment. I did that by telling my interviewers about how I had made my initial choice to go into litigation, about how I had thought long and hard about whether litigation was a good fit for me (and how I had decided that it was not), and why I thought I would be a terrific real estate lawyer if given the opportunity. I had a pitch that I had thought a great deal about and had spent a great deal of time crafting, and I stuck to it. Fortunately, I also happened to be looking for a real estate job during the greatest real estate boom in twenty years, and that's where the luck comes in. You may have thought a great deal about why you would be a perfect fit for a particular area of law, and you may be able to convincingly articulate those reasons, but if you are looking for a job in a particular area of law during a down cycle for that area, you will likely be faced with a longer search. That isn't to say that you shouldn't try; you just need to be prepared for that longer search and to be persistent.

At the end of the day, making a transition from litigation to transactional law (or from one specialty within those areas to another), whether you are a first year or twenty years out of law school, requires introspection, planning and persistence. Be absolutely sure about the change you want to make, be able to articulate why you want to make that change and why someone should take a chance on you when you make it and keep trying until you manage to make it happen. Most importantly, time your transition well.

Tarun Chandran is an associate in the Real Estate department of Paul, Hastings, Janofsky & Walker LLP's Chicago office.

South Asian Women Attorneys Network (SAWAN): Promoting Mentoring and Professional Development Opportunities

By Mansi Shah and Miruni Soosaipillai, SAWAN Co-Chairs

The South Asian Women Attorneys Network (SAWAN) is a Section of NASABA dedicated to supporting the professional development of South Asian women in the legal profession. This year, SAWAN is working towards its goal of having active Mentor Circles for women in every SABA chapter, as well as planning a panel for the upcoming NASABA Convention that will be held June 24-27, 2010 in Boston.

NASABA Convention Panel

SAWAN is putting together a panel for the 2010 NASABA Convention called “Uncovering the Unwritten Rules—South Asian Women in Leadership Roles Share the Secrets to Success.” The panel will feature women from a variety of leadership roles in organizations such as corporate boards, non-profits boards, law firms, public interest and government legal practice. In line with SAWAN’s focus on professional development and mentoring, the panelists will share their experiences on the path to leadership, including how they have learned and applied the unwritten rules that are crucial to success. If you have suggestions for potential speakers for the panel, please contact the SAWAN Co-Chairs, Mansi Shah (shahm@howrey.com) and Miruni Soosaipillai (mirunis@yahoo.com).

Mentor Circles

SAWAN is pleased to announce its plan to launch Mentor Circles for women in every SABA chapter. The Mentor Circles are designed to provide a collection of mentoring relationships to female members of NASABA. Each chapter will have a SAWAN liaison responsible for organizing the circles and planning regular meetings. SAWAN will provide support and evaluate the progress of the Mentor Circles on an ongoing basis.

Mentor Circles are small groups, made up of 5 to 15 women, representing a variety of practice areas and

experience levels, from law students to senior attorneys. The groups will meet at least quarterly to discuss topics ranging from diversity and rainmaking in law firms to navigating unwritten rules and career development, and may also circulate relevant articles or books for members to read and discuss at the meeting. Keeping the groups small will allow for more frank conversations and is more likely to lead to the development of meaningful mentor relationships.

The purpose of the Mentor Circles is to improve the professional satisfaction and retention of South Asian women attorneys in law firms, government, public interest, in-house counsel and other roles, and assist South Asian women in gaining positions of power within their respective organizations. We hope that the Mentor Circles will contribute to the professional development of South Asian women attorneys by providing a place to come together to solve problems in their day-to-day practice of law, gain wisdom from other attorneys, develop skills with the help of other participants, and find support for future success.

SABA-NC has successfully kicked off its Mentor Circles with meetings in both San Francisco and the South Bay (Silicon Valley). The SABA chapters in Southern California and Sacramento are currently working on developing their Mentor Circles, and another dozen chapters have appointed liaisons to work with SAWAN on this project. We will continue to work toward the goal of having active Mentor Circles in every chapter.

If you would like to participate and your chapter has not yet begun planning Mentor Circles, please contact SAWAN Co-Chairs Mansi Shah (shahm@howrey.com) and Miruni Soosaipillai (mirunis@yahoo.com) for more information. As Co-Chairs of SAWAN, we would like to assist your chapter with anything you may need to establish your Mentor Circles and make them a success.

PRESIDENT'S LETTER

May 3, 2010

Friends,

It is with great pleasure that I announce NASABA's Executive Committee for the upcoming year. These dedicated folks including many from our current EC will take office on July 1st: President – Anna Sankaran, President-Elect – Jolsna John, Secretary – Tarun Chandran, Treasurer – Priya Marwah Doornbos, V.P. Memberships – Emilie Ninan, V.P. Affiliate Relations – Manjit Gill, V.P. Community Outreach – Paul Saghera, V.P. Public Relations – Chintan Amin, and V.P. Convention (appointed by our 2011 Convention Host Chapter-SABA-SoCal) – Ankita Patel. Congratulations to all of them.

As I write this letter, we are focused on our upcoming Annual Convention in Boston. This year's Seventh Annual Convention, "Making History" will take place from June 24-27, 2010 at the Intercontinental Hotel in Boston. Registration, Sponsorship, Schedules and Speaker information are available on the convention website, www.nasabaconvention.com. Our wide network of attorneys around the U.S. and Canada along with the leadership of SABA-Greater Boston are hard at work to make this the best Convention experience ever. Some of the highlighted events include an open conversation with Neel Kashkari, former Asst. Secretary of the U.S. Treasury who oversaw the distribution of the TARP funds and a reconsideration of U.S. v. Bhagat Singh Thind (1923), the case in which the U.S. Supreme Court deemed Asian Indians ineligible for citizenship. We certainly hope that you will join us this summer.

In late April, NASABA sent a letter to Chief Judge Folsom for the Eastern District of Texas in response to press reports on statements made by counsel, Nelson Roach, in his closing arguments. A copy of the letter is posted under News and Events on the NASABA website. The letter has sparked some interest in the press and commentary on a few legal blogs, all of which are posted on the NASABA website. A South Asian attorney present in the courtroom when these remarks were made, P. Anthony Sammi, will be speaking at the Boston Convention on the topic of addressing xenophobic statements in a courtroom.

In the past few months NASABA has issued two Endorsement Letters on behalf of judicial candidates for the Superior courts of California. We were very pleased to issue letters on behalf of Shama Mesiwala and Halim Dhanidina. We are seeking members to our Endorsements Committee to consider future candidates. Please contact me if you are interested in joining.

Last week, we added a blog to the NASABA website. We hope you will subscribe by following the links on the blog, and participate. We plan to use the blog to keep you posted on NASABA matters as they arise

We are currently seeking a Chair for our Public Interest Committee. Please consider that or one of the many other opportunities in which you can participate in NASABA.

I look forward to your questions or comments to president@nasaba.com.

Regards,

President, NASABA
www.nasaba.com
www.nasabaconvention.org