

Reform efforts put immigration laws under scrutiny

BY LESLIE WIMMER

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The field of immigration and nationality law is facing rapid changes as immigration reform continues to grow as a major issue in the United States.

Overall, immigration and nationality law is a misunderstood field in the legal profession, some attorneys say, and during the past three years the recession has taken a toll on the business and employment side of the field. As issues relating to immigration reform in Washington D.C. and illegal immigration across the country continue to gain a strong national focus, attorneys say they expect more young professionals to move into the field.

As immigration has become a big issue nationally, it has saturated other legal fields, such as criminal law and real estate law, which brings lawyers in other areas of the profession into focusing some of their attention on the field despite their original career focus, said Texas Wesleyan University Law Professor Huyen Pham.

“In many ways immigration law has permeated other areas of law,” Pham said. Recently, “a Supreme Court case came down that said basically a criminal defense attorney who improperly advises, or fails to advise, his immigrant client of the immigration consequences of a guilty plea has provided ineffective counsel. If you plead guilty and as a result of your guilty plea you are put in deportation, you can claim Fifth Amendment guarantees to effective counsel.”

Family law, business law and employment law are other focus areas that often overlap with immigration law, Pham said.

The big picture of where immigration law, as a profession, is headed in the future rests on what type of immigration reform legislation will come from Congress, said Kathleen Walker, a partner with the El Paso firm Brown McCarroll LLP, and past president of the American Immigration Lawyers Association. Walker is currently general counsel to the association’s executive committee.

Immigration lawyers “follow what happens legislatively,” she said. “I’m not going to hold my breath, but there could be a major legislative change this year. I’ll believe it when I see it. It’s very tied up in political machinations before November... I think that our future is very much

tied into whether or not we're going to see any portion of immigration reform going through in the next 12 months. It can impact millions.”

The federal and state-level focus on removing – or deporting – immigrants has gone up in recent years, as has the legislative focus on business compliance with immigration laws, Walker said, adding that those changes often bring about new rules and new clients.

“Removal and detention work is up because there are more resources being provided by the federal government to remove unauthorized workers from the U.S., so from a removal side, work there has increased,” she said. “From a compliance side, because you're getting businesses getting notice of inspections or audits of filings with [U.S. Citizenship and Immigration Services] for fraud, that type of compliance work has also increased.”

But, while some aspects of the field are growing, others are changing because of the recession, she said.

Starting in 2009, a lot of business immigration lawyers were laid off across the country, and businesses in a number of industries that often rely on temporary work visas to bring in immigrant workers couldn't bring in any or as many workers because of tight budgets.

One reason young lawyers and law students may be focusing on immigration law is because the field offers a number of challenges and rewards, Walker said.

“I think the complexity of immigration and how you're able to have that individual impact allows a lot of people an outlet for passion for a particular legal field,” Walker said. “What you're doing is critical to a family's ability to be in the U.S. or a company's ability to do a project, or to bring an entertainer or artist or athlete to the country... And, of course, it's a very political issue.”

Charles Foster, an immigration attorney and co-chairman of FosterQuan LLP in Houston, said immigration law is a misunderstood practice. Foster, chair of the immigration law section of the State Bar of Texas, has advised United States presidents, including Barack Obama, George W. Bush and Ronald Reagan, on immigration issues.

“What immigration lawyers do is very different from what people think,” he said. “When I tell people I'm an immigration lawyer they have a reaction that generally is ‘Gosh, business must be good,’ because in their subconscious they know we have this big immigration problem of undocumented workers, and somehow they think that's all we do.”

Foster often tells people that his biggest clients are big school systems, university systems, medical centers, various businesses including high tech and service companies, arts organizations, and sports organizations. He added that often people don't understand that because the United States has a restrictive immigration system everyone – including NBA players and ballet dancers from other countries – must go through various channels to get into the U.S.

“Everyone who wants to work in America must go through a very restrictive legal process,” he said, adding that immigration quotas and restrictions began in 1968. “In 1968 we imposed the first quotas, and we kept on shutting that valve down so that to legally immigrate today is like going through the eye of a needle.”

Today’s immigration system, which Foster calls a doctrine of unintended consequences, must be changed, he said, adding that politics is holding up reform.

“Politics is everything, so [legislators] aren’t going to do anything before the elections” in November, Foster said. “It’s become political football.”