

Surfing the Net: A Quick-and-Dirty Guide to Basic Legal Research

IN THIS ISSUE, WE BEGIN a series of articles on using the Internet to assist in preparing various types of immigration cases. We thought we would start with one of the most common types of employment-based visa cases—the H-1B application. We will approach each visa by presenting a hypothetical.

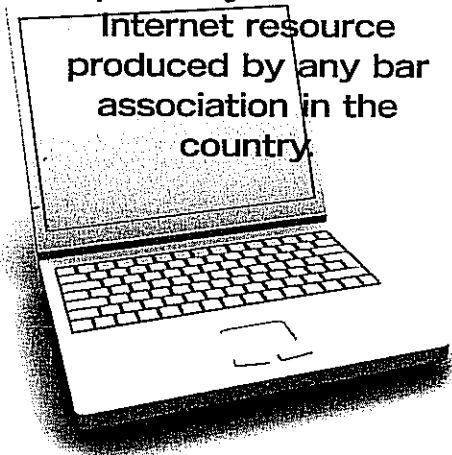
Obviously, a firm grounding in the law is always crucial before working on an immigration case. This article is not intended to focus on the best legal research sources on the Web, and using print versus electronic resources is, in many ways, a matter of personal preference. However, there are a few sites worth noting. And there are products like AILALink (AILA's immigration library on CD-ROM; see www.ailapubs.org for more information) and LexisNexis (www.lexis-nexis.com) that are excellent resources, but discussion of these products goes beyond the scope of this article.

For quick-and-dirty, basic legal research, you might find U.S. Citizenship and Immigration Service's (USCIS) Web site (www.uscis.gov) a good place to start, especially if you are seeking primary source material. You can find, among many other items, the Immigration and Nationality Act (INA), regulations, and operations instructions there.

The single best source for agency memoranda, minutes from liaison meetings where policy and procedural issues are discussed, and updates on pending legislation would no doubt be AILA's InfoNet, which is available to all AILA members as part of membership dues. The offerings on InfoNet are vast and constantly expanding. InfoNet is probably the best Internet resource produced by any bar association in the country.

AILA also publishes annually a compilation of all the past year's agency cables, memos, and liaison committee minutes as a desk reference available to members and nonmembers. Please see www.ailapubs.org for more information.

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The message boards on InfoNet's "Message Center" also can be useful research tools. A search through the archives will often reveal similar questions having been asked along with the responses.

The H-1B Cap

For this case study, we will look at an Indian physical therapist being hired to provide physiotherapy services at a hospital in Nevada. One of the most important issues to consider in an H-1B case is whether H-1B visas are even available under the annual cap. While there are useful print resources available, Web sites such as www.aila.org, the AILA InfoNet, and Siskind Susser's www.Visalaw.com are places you can go to get this information.

Assuming the H-1B cap is an issue in our hypothetical case, we would need to qualify for an H-1B cap exemption. As readers no doubt know, cap exemptions are available

to people working for nonprofit research institutions as well as for universities. The Web can help you in documenting whether the exemption is available. Many nonprofit research hospitals actually post their tax returns online, and you can quickly download your evidence. A number of hospitals qualify for H-1B cap exemptions as institutions of higher education because they have nurse and health professional training programs. In a recent case, a hospital employer said it did not qualify for an exemption. However, the hospital's Web site revealed it had an associate's degree program for nurses at the hospital, thereby qualifying the whole institution for a cap exemption.

Finally, hospital Web sites frequently contain information about affiliation arrangements with universities (some of which the human resources department may not know); and, if the hospital is a nonprofit, its relationship with the university may qualify the hospital for an exemption.

Type of Occupation

So now you believe that an H-1B number is available. A basic issue in an H-1B case is to document that the occupation qualifies as a specialty occupation. One of the first places you would typically check would be the Department of Labor's *Dictionary of Occupational Titles (DOT)*. The DOT is available online at www.oalj.dol.gov/libdot.htm. Another DOL database to check is O*NET, found at www.doleta.gov/programs/onet.

The Prevailing Wage

A key requirement that could trip up your client is demonstrating whether the prevailing wage is being paid. You might first want to submit to the appropriate state workforce agency (SWA) a prevailing wage request. DOL has a page at www.ows.doleta.gov/foreign/contacts.asp that has all the contact information for each SWA.

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You can look up the same data the state sees by checking DOL's online wage database.

The DOL's page has links to some of the SWAs. DOL also links to prevailing wage forms for some of the states, also available for downloading. Some states, like Colorado, now have Web-based forms where you can submit your request for a prevailing wage right from the Web site.

Lawyers often do their own wage research rather than rely on the state's determination of the prevailing wage. You can look up the same data the state sees by checking DOL's online wage database at www.flcdatabase.com. And if you cannot find an applicable or satisfactory wage in this database, there are many, many Web sites out there that publish wage surveys in various industries.

Once you prepare the labor condition application, you can file it electronically from the Department of Labor's Web site at www.lca.doleta.gov.

While preparing the case, you will need to double check the filing fee. USCIS has its fee schedule at <http://uscis.gov/graphics/formsfee/forms/index.htm>.

Ways to File

Now you are ready to file your case. If you want to file by mail, you can find information on where to file the case, service center procedures, and filing tips by going to http://uscis.gov/graphics/fieldoffices/service_centers/index.htm.

You can also now file your case electronically. This might be critical if you are racing against the clock in a case, and you need to get a receipt instantly. E-filing is now possible—at least the filing of the forms. Supporting documents still need to be submitted by mail along with the printed-out filing data (think of this as similar to the way you respond to a request for additional evidence). You also pay the filing fee electronically, either from your checking account or via credit card. Of course, since e-filing does not yet

integrate very well with case management programs and will involve more work, you might want to take that into account. Our firm charges a small surcharge in e-filed cases to make up for the additional time expenditure. You can find USCIS's e-filing page at <http://uscis.gov/graphics/formsfee/forms/eFiling.htm>.


After you have filed the case, you will need to monitor its progress. How long will the case take to process? You can check the AILA InfoNet for processing times as well as USCIS's Web site at <https://egov.immigration.gov/cris/jsp/index.jsp>. You can then check the status of a case at USCIS online (rather than using the old and cumbersome phone system) by going to <https://egov.immigration.gov/cris/jsp/caseStat.jsp> with receipt in hand. You also can have USCIS automatically notify you regarding multiple cases by creating a portfolio account at the same address.

The Visa Stamp

Hopefully, your case gets approved in short order without a glitch. Now you need to assist the client in finishing up by getting the visa stamp. If the client is in the United States, you might choose to third country process at a U.S. consulate in Canada or Mexico. For several years, the State Department has required advance appointments at these consulates. The appointment can be booked online at www.nvars.com.

If your client is processing in his or her home country, you will want to go to the Web site for the appropriate consulate at http://travel.state.gov/visa/questions_embassy.html to get critical processing information. The consulate Web site will normally have links to the appropriate visa application forms as well. A helpful resource on consular processing available in print—and electronically on AILALink—is *The Visa Processing Guide*

(AILA 2004-05 ed.). See www.ailapubs.org for more information.

We welcome comments on sites that are helpful in H-1B cases but were not mentioned in this article. Just e-mail us at ILT@aila.org. Also, let us know what type of cases you would like us to profile in future "Tech Notes" columns. 

Greg Siskind is the author of the ABA's book, *The Lawyer's Guide to Marketing on the Internet*, and a partner in the immigration law firm of Siskind, Susser, Haas & Devine. **David Jones** is a partner in the firm's Memphis office and its resident technology guru.

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CONVICTIONS OVERTURNED

Labe Richman, Attorney at Law, has an astounding record for overturning convictions on appeal or by collateral attack. This creative, aggressive and knowledgeable lawyer has over 20 years of criminal trial and appellate experience in New York State and federal courts. He has lectured and published widely in the area of criminal law and has been given the highest possible rating from Martindale Hubbell.

Labe M. Richman, Esq.
Criminal Trials, Appeals,
Collateral Attacks, and Investigations
305 Broadway, Suite 100
New York, NY 10007
(212) 227-1914;
Email: Labe@LabeRichman.com
Web Site: www.LabeRichman.com