Stories From Immigration Practice

How three diverse clients see the world

BY DANIEL KANSTROOM

Little in life is more complicated, more challenging, more stressful—and if you are lucky—more rewarding than representing a client in immigration proceedings in the United States. The law itself is intricate to the point of once having been described as an area in which “morsels of comprehension must be pried from mollusks of jargon.” The stakes could not be higher: family unity, the possibility of living in the United States and, in refugee and asylum cases, often life and death.

At the practice level, one encounters complex issues of racial, religious, cultural, and ethnic diversity that make client preparation for interviews and hearings an unusually interesting enterprise. Following are some vignettes from 20 years of immigration practice.

Case 1: Swearing to God

I once represented a Tibetan Buddhist monk who was applying for permanent residence status in a category that required proof of two basic things: that he was, in fact, a Tibetan Buddhist monk and that he was coming to the United States to accept a position with a bona fide religious organization that sought his services.

I liked this client very much. He had an unfailingly cheery disposition. As my father used to say, he seemed to go through life with “a smile on his face and a song in his heart.” I supposed this was consistent with his theology. As a serious young attorney, however, I worried about how my client would fare at his interview with the Immigration and Naturalization Service (INS). So we practiced.

I tried my best to tell him what to expect. There would be questions about his studies, his training, his prior work, his personal and family history, his intentions for the future, the nature of the position he had been offered, and on and on. I spent hours preparing him for the day when a lower-level INS bureaucrat would hold his future in her hands.

Share your knowledge

Now that you’ve completed your studies, you are ready to share your knowledge with the judge. First, tell the court about the cultural issues in the case. Do so in a formal or informal way, whichever best suits the cultural issues, the law, your case, and the judge.

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more prepared to expose the child to it." Id. at 123.

As in the case above, your client might benefit from consideration of the effect of discrimination on the children. Therefore, you could include this as a point of argument in your motion for custody, along with other issues, such as exposure to cultural heritage, the unwillingness of one parent to honor the child's heritage, etc.

Proving the case

In addition to making formal or informal motions, you will need to decide whether to provide evidence to support and/or prove up your client's case. This depends on the content of your case and requirements of law. In considering how best to provide evidence, remember this principle: evidence should give your client a voice regarding his or her cultural heritage that will persuade the judge to decide in your favor.

Occasionally, tangible evidence will be necessary, such as written materials (for example, a tribal membership card or ID), cultural items, photos, etc. Although these items may not seem important, they may give the judge a firsthand view into the culture. For example, in ICWA cases, a child's Indian heritage may not come into question if documentation is not immediately available. For some judges, a child might not look or "seem" Native American, until a photo showing him or her dressed in ceremonial regalia or participating in other cultural activities is produced in court. Suddenly, the issue of the child's cultural heritage becomes more concrete and important.

A useful way to give your client a voice regarding his or her cultural heritage is to provide a voice for the judge to hear. Oral testimony from a good witness gives the judge a firsthand view into the culture. For example, in ICWA cases, a child's Indian heritage may not come into question if documentation is not immediately available. For some judges, a child might not look or "seem" Native American, until a photo showing him or her dressed in ceremonial regalia or participating in other cultural activities is produced in court. Suddenly, the issue of the child's cultural heritage becomes more concrete and important.

The cultural issues that arise in civil cases often are specific or unique enough to point you toward the kind of witness you'll need. A good example is in termination-of-parental-rights cases where the child is of Native American heritage. The Indian Child Welfare Act requires a qualified expert witness to testify in the case. (Indian Child Welfare Act of 1978, 25 U.S.C.A. § 1912(f).) The guidelines set forth by the BIA for ICWA further specify that the expert witness must be (a) a member of the child's tribe or (b) an expert who has worked with the tribe and has knowledge of social and cultural standards as well as child-rearing practices and so on. (“Bureau of Indian Affairs Guidelines for State Courts: Indian Custody Proceedings,” Federal Register, Vol. 44, No. 70, Monday, April 23, 1979.)

Our breakthrough moment occurred quite unexpectedly

Noting my frustration and worry, he put his face close to mine, touched my shoulder and said, "Oh, I remember now. You think God is outside of you, so you can swear to him. I have learned that some people believe that. But for me, God is part of everything, and I am part of God. So how can I swear to myself?"

"Ha," I said, "That's it! When we go into the interview, just do exactly that—tell the whole thing—I am sure that will convince them that you are a true Buddhist.

Two weeks later, we went for our interview. The INS agent was a very serious, unfriendly, deadpan, middle-aged man who seemed neither to know much nor care about Buddhism or anything like it. As he began to administer the oath, my client started to laugh. "What's going on?" he said.

"I suppose you should ask him," I replied in a lawyerly but friendly way. "Okay, sir, what is going on?" My client then explained everything with perfect theological sophistication and good humor. I sat with my arms folded, convinced that the interview was, for all intents and purposes, over. "Look," said the agent, "is he going to swear in or not? Because if he's not, then we have nothing more to do here, and I'm going to deny the case right now." I looked at my Buddhist client, gingly raised his right hand, and with a barely suppressed giggle said, "He'll swear, for whatever it's worth."
Case 2: Raising your hand

Swearing presents other practical problems. I once had an African client who had a compelling but difficult political asylum claim. This was to be heard in a formal hearing before an immigration judge. The judge was well-known as a no-nonsense, tough customer with little patience. He ran a tight ship. As asylum cases often turn on minor inconsistencies and weigh heavily on client testimony, preparation is critical and often can take dozens of hours.

With this client, we had many problems of dates and times. He was a farmer. His approach to time was primarily seasonal. But I knew that the judge would want to know not only the exact description of the men who had kidnapped and tortured him, but the exact date and time. My client simply did not see the world in that way.

Little by little, we settled on a compromise. He would tell me the season and where the sun was in the sky, and I would suggest a date and time. The next time I would ask him about the season and position of the sun and remind him of the date we had settled on. Eventually, simply by memorizing our decisions, he established a westernized chronology for the court.

Unfortunately, amid all this preparation I had neglected another cultural dissonance. I told him that it was important to make a good impression on the judge, to make eye contact and speak forthrightly. I suggested that this should be done at the very outset of the hearing.

“You will go into the courtroom and sit with me. Then the judge will come in, and we will all stand. The judge will tell us to be seated, and we will sit together. Then, you will look at the judge seriously, but don’t scowl. Don’t smile either. Just look serious and look right at him so that he sees you as a person and will listen carefully to your story. The judge will tell you to stand and raise your right hand to take the oath. Do that forcefully, too.”

My client nodded.

When we got into court, my client was exquisitely prepared. He sat and rose on cue. He looked the judge in the eye. The judge told him to raise his right hand. My client, looking the judge in the eye the whole time, stood up, walked to the side of the judge, raised his right hand, then his whole right arm, and gave the judge a perfect Nazi-style salute.

Case 3: Lost in translation

I represented a well-educated man from a Latin American country who had been active in local politics. He was a mayoral candidate of a moderate democratic party that was targeted by a Maoist insurgent group. My client had been threatened personally and had received threatening phone calls for many months. One night, while walking to his car, he was kidnapped by masked men and beaten up. They told him if he didn’t quit his campaign they would come back and kill him and his family. The men did not identify themselves. There were no witnesses. This presented a critical issue in his case. Unless we could prove who these men were and that their threats and attacks were politically motivated, he would not be eligible for asylum.

A key piece of evidence emerged after some weeks of meetings. My client had forgotten to mention that someone had spray-painted graffiti on his car around the same time as the kidnapping. He had taken a picture of the car for insurance purposes. I asked him to show me the picture.

Sure enough, his car had been covered with symbols that could be tied to the group that had threatened him—in particular a hammer and sickle. He knew what those symbols meant, but he had not thought of the evidentiary importance of the car.

My client spoke no English, so his hearing required an interpreter. This person was, to my mind, largely incompetent. She was not well-educated and had gone so far as to admit to the judge that she had difficulty understanding some of the words my well-educated client was using. I objected, of course, but got nowhere until critical testimony about the photograph came in. The translator, ostensibly speaking for my client, offered the following to the judge:

Q: “Did you notice anything else unusual that day?”
A: “Yes, I did.”

Q: “What did you notice.”
A: “My car had been damaged.”

Q: “What kind of damage?”
A: “They had spray painted it.”

Q: “What had they spray painted?”
A: “Pictures.”

Q: “What kind of pictures?”
A: “Pictures of farm tools.”

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