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# Alien Smuggling

**By Reuben S. Seguritan**

Alien smuggling is the latest bane afflicting immigrant visa applicants. Under a recent immigration law amendment, it need not be "for gain" to constitute a ground of ineligibility.

Alien smuggling is not limited to cases of entry without inspection. A recent illustration cited was that of Taiwanese mothers who brought their children to the US under tourist visas. These children not only overstayed, but also attended US schools.

According to the Advisory Opinions Division of the Visa Office, charges of alien smuggling against the mother will be upheld where the children did not change status from tourist to student. Such instance, it said, shows the principal intent of the mother to have her children study, or reside permanently.

Also, entering on an incorrect visa may result to charges of alien smuggling against family members who have assisted in the entry of their children under a visa they have helped obtain.
Alien smuggling cases also involve misrepresentations by parent companies. A parent company that advises its representative to obtain an incorrect visa to visit its US subsidiary may expect to be lodged a finding of excludability. An example is when an employee is advised by his parent company to obtain a B-1 to visit its US subsidiary, but, at the port of entry, the INS officer determines that the alien employee should have instead applied for an L-1 or E visa.

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Alien smuggling has been found in the case of an L-1 employer who furnished an employment letter for his domestic worker claiming that the worker was employed in his factory. Even as the alien would have anyhow been admitted under a B-1 visa, the evidence that the true facts had not been disclosed was enough to uphold the finding of alien smuggling.

To counter a finding of excludability, visa applicants must file for a waiver.

Under Sec 212(d)(11) of the Immigration Act, waivers are available , but only to the following groups:

1. Permanent residents involved in smuggling a spouse, parent, son or daughter, and

2. Applicants seeking immigrant status as immediate relatives or under the family-based first, second and third preferences.

Family-based fourth who are brothers and sisters of citizens, respectively, are excluded from the waivers. All applicants under the employment-based preferences are likewise excluded. It has been a recurrent practice though for a derivative spouse of an employment-based principal alien to be refused a visa for alien smuggling, but can seek to qualify for a waiver if a family-based second preference is filed on the derivative spouse' behalf, causing, in the process, a delay in the immigration of the derivative spouse.

*EXPEDITED PROCESSING*

Because of the circuitous procedures in the transmittal of immigrant visa petitions from one office to another, specifically from INS to TIVPC, then finally to the consular offices, the Visa office agreed to empower the consular posts to process immigrant visa applications upon its receipt of an INS cable advising of petition approval or an **original** Notice of Approval and attorney-authenticated copy of the petition and supporting documents.

Under the new procedure, green cards and original notice of approval of petition may be sufficient evidence to process petitions of derivative family members as "following to join". It may not be necessary therefore to file and wait for an approval of Form I-824 for those who adjusted status, since the two aforementioned documents are sufficient enough.

*CLEAR CASES OF FRAUD*

Consular officers are now also given greater discretion to enter findings of excludability without having to submit certain cases to the Advisory Opinions Board. These occur: a) when an applicant seeking admission as a tourist makes an unambiguous statement at a port of entry referring to a prearranged employment in the US, or b) when an applicant seeking admission as a tourist or student makes an unambiguous statement at the port of entry in regard to unambiguous intent to reside permanently in the US.