

America - make it your home

Immigration Newsletter from the desk of Wolf W. Kaufmann, Esq.

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BEWARE OF THE TRAP

Confusing terms can be disastrous.

Most people, “aliens” as well as Americans, use the terms “visa” and “green card” as if they meant the same. They might say: “I won in the diversity lottery, now I have to apply for my green card,” or “my E-visa authorizes me to stay until the end of the year.” Both sentences are technically and juridically wrong. Why confusion of the terms can be disastrous shows this example:

A nurse had been in the United States as a student, having entered the country with a F-1 visa. After her studies were completed, she found an employer who successfully petitioned for her to obtain a residency permit and work authorization under the terms of section 101(a)(15)(H) of the Immigration and Naturalization act, commonly called H1-B. Upon the approval of the employer’s petition, she applied for a “change of status” and the USCIS approved that application. She received a letter from the service on a form called I-797 that stated that she now was authorized to stay in the country and work for a limited time.

Happily she arranged for a trip home to an Asian country and spent some well deserved weeks of vacation there. On the way back to the United States disaster struck: upon arrival at the airport and inspection by the CBP officer she was detained and after several hours sent back to her home country. In addition, the officer advised her that for the next five years she would be barred from re-entry. If she tried to come back to the U.S. she would be sent back again.

The young nurse was devastated and so were her parents. Her parents contacted an immigration attorney to find out what could be done about this apparent mistake the CBP officers must have made.

To their horror the attorney had to tell them that the officers did not make a mistake. On the contrary, they

followed the book. “But”, the parents said, “she had this letter from USCIS...”

Yes, she had the I-797 granting her a residency permit and work authorization. What she did not have was a visa.

VISA OR PERMIT?

Let us briefly go back to our first two sentences: “I won in the diversity lottery, now I have to apply for my green card” is wrong. Correctly you would have to say: “I won in the diversity lottery, now I have to apply for the *immigrant visa*.” You will have to go to the U.S. consulate, fill out a lot of papers and then you will be given a big envelope with a form attached that is labeled: “Immigrant visa.” This form allows you to present yourself at an airport or any other border inspection station to ask for admittance to the United States.

The actual “green card” which will be sent to you only *after you have been admitted* is a “residency permit.” This card is proof that you are allowed to stay in the United States and work here.

To make the difference between the documents clear, let us assume that you would have been in Canada, did not bother to cross the border at an inspection point, but have taken your big envelope with the immigrant visa and just walked through the forest and across the border and settled in Montana. A year later an ICE agent happens to ask you for your permit to be in the U.S. You answer: “Oh, here is that envelope I got from the Consulate.” The agent will arrest you and put you in “removal proceedings.”

Why? Because your *visa* simply gave you the authority to present yourself at the border to apply for admission. It did not give you permission to be in the United States. For that you would have needed a *residency permit*, the actual “green card.”

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The poor nurse in our example did only have a valid residency permit. But she did not have a visa, so she had no permission to present herself at the airport and ask to be admitted into the country.

The drastic consequences of being turned away and being barred for the next five years from asking for permission to enter the country again, shows how important it is to understand the difference between the two concepts of a “visa” and a “residency permit.”

To make matters even more complicated, the actual “green card,” the “Alien Registration Card” is the only document serving as both: a permit to present yourself at the border and evidence of the permission to be in the country and work in the country. Once you have the actual card, or the I-551 stamp in the passport, you do not need a visa any more to enter the U.S.

But in all other cases you always need two documents to come to the United States and to be in the United States: a *visa* (or a passport in case you qualify for a visa waiver) and a permission to stay, which usually is given on a form called *I-94*, a white or green card stamped by the officer and most often attached to your passport.

This now also explains a mistake seen very often by immigration attorneys: if both documents have different expiration dates, people tend to confuse what they mean:

HOW LONG MAY I STAY?

Let us assume you have an E-2 visa to enter the country as a non-immigrant treaty investor. The visa says it expires on May 4, 2020. When you first enter the country, the officer attaches a white I-94 card to your passport and stamps it with the words: Admitted until January 12, 2011. How long may you stay in the country?

The correct answer is: until January 12, 2011. Remember, the visa only allows you to present yourself

at the border. The I-94 determines how long you may stay in the country. In this example, the owner of this visa may leave the country any time and apply again at an airport or border crossing for re-entry until the visa expires, that is he can use this visa until May 4, 2020. But he must not stay longer than January 20, 2011 unless he obtains an extension of stay.

The same scenario can be found vice versa: the I-94 expires after the visa. In this case you can stay as long as the I-94 allows you to stay, but if you leave after the visa expired, you will not be readmitted, even if your I-94 has not expired yet.

THINK OF TWO COUNTRIES

To remember this confusing state of affairs, and not to step into the trap into which the poor nurse stepped, you might think of America consisting of two different countries: Borderland and Interiorland. You only can travel to Interiorland, the interior of the United States, if you travel through Borderland, that is the airports or border inspection stations. For both countries you need a different document: for Borderland a visa (or a passport for visa-waiver visitors) and for Interiorland an I-94 or I-797. Only the actual “green card” works in both countries. If you want to find out how long you may stay in Interiorland, you must look at your I-94.

DON'T LOSE HOPE TOO SOON

Removal proceedings need not be the final word

The arrest happened quite unexpectedly. The client took a corner without a signal and the police cruiser behind him flashed its lights. The officers, preparing to issue a traffic ticket, asked for the driving license. The driver, a citizen of a Latin American country, did not have any. The officers asked for the driver's citizenship and authorization to be in the country. The driver stated his true citizenship and admitted he had no authority to

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be in the country. While the driver's wife and children watched in horror, the officers slapped handcuffs on the driver and took him to jail.

A scenario like this happens hundreds of times in a given week all across America. Now I could write the rest of the story with a happy and a sad end. Let me tell you about a sad ending I have just come across this week:

The police officers booked the driver into jail. A day later the judge handed down a penalty for driving without a license: 3 days in jail and a fine of \$ 300. After the three days, two agents from ICE, the immigration police, showed up at the jail and took the driver yet to another place with barred windows: to a detention center. Here "illegal" aliens are kept until they either are being released or deported.

The driver was given an arrest warrant, and a form called *Notice to Appear*. In it the government detailed the charges against the driver: "You are found in the United States without having been inspected and without authorization." After a lot of legalese the form advised the driver: "You will have to appear at a hearing before the immigration judge." Another form said: "Notice of hearing before the immigration judge" and told the driver to be in immigration court about 4 months later for his hearing.

The driver was not a bad man. He had sneaked across the border 15 years ago, had no prior criminal convictions, he was the father of two young children, married to an American citizen, working without being authorized to, but providing for his family. Because of these mostly positive facts, the Detention Officer allowed the driver to be released from detention until the hearing, if he posted \$ 1500 bond. His wife came the next day and paid the money and could take the driver home.

Now the story turns toward disaster: the driver told his story to his friends. They in turn told him horror stories of deportation, arrests in the night, hopeless cases and

eternal despair. A "notario," a self-appointed illegal "immigration advisor" told him he had no chance of ever being allowed to stay in the country. Every day for the next 3 months the driver had nightmares of a vicious judge who would throw him into eternal hell.

On the date of the hearing our driver did not appear. Actually he hid at the house of a cousin for the next 3 weeks. Once he realized the cavalry was not looking for him, he returned to his wife and children and continued to live his simple and quiet life.

Until a day a year later. Again it was a dark night, again there was not much traffic, so he sped up a bit to get home. Again he didn't see the patrol car. Again he was arrested. But this time he was not released. This time he was put into detention, waiting for the bus or plane to take him to the border to be deported.

His distraught wife called an immigration attorney. Now it was too late. As much as he wanted to, the attorney could not stop the deportation. A week later the driver was back in a small village where he was born, in Central America. His wife and children were a thousand miles away. He had been told that for the next ten years he would not be allowed back into the United States. If he tried, he would be arrested again and may be even sentenced to prison.

Now, since this is the Christmas season, how could we have given this story a much happier ending?

The answer is: if instead of listening to all his doomsaying friends and notarios, he had asked an immigration attorney. The attorney would have told him, that despite being in the country "illegally" and despite working without authorization, he had a good chance of convincing the immigration judge to let him stay in the country. Because he had been in the country for so long and was married to a citizen, was providing for his children, and had no prior record, he would probably have been granted "cancellation of removal" and "adjustment of status" to legal permanent resident. He would have gotten a green card!

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This story shows that it always pays to obtain competent legal representation in immigration matters. Friends, notarios, agencies and consultants, and internet bloggers or forum writers usually do not know enough about the law to give good advice.

Of course, not every story has a happy end. Not every alien in removal proceedings qualifies for cancellation of removal or any other relief. Sometimes there is nothing even the best and priciest attorney can do to prevent removal. But at least he or she can advise you about your rights, alternative ways to leave the country, and about strategies to plan a legal re-entry in the future.

DRAMATIC SHORTAGE

Physicians urgently needed in many areas

Health care is the buzzword of the season, and many stories have been written about the urgency to create a comprehensive health insurance system for all Americans, about the quality and excellence of American medical providers and hospitals, about the shortage of nurses and their immigration problems, but not much is being told about another extreme, and scary, shortage: a shortage of physicians.

Strolling along Park Avenue on the Upper East Side of Manhattan you won't have any feelings of a shortage: there must be two or three doctors' offices in every building for miles and miles. I have lived on the Upper East Side and had a marvelous choice of very good physicians. Most of my doctors actually had been immigrants, fondly telling me stories about their home countries and about the one or other celebrity patient they were treating from Germany.

However, here on the West Coast suddenly a very different story caught my attention: last year a middle sized college town in the Southwest had to close one of

two remaining emergency rooms because the hospital simply did not find any qualified emergency physicians to staff it. It was a scary story, thousands of people living in this city, and thousands of tourists or rural neighbors now were dependent on just one functioning emergency room. The next one was almost 2 hours away.

So it did not come to me as a surprise to find out that many of my fellow patients at my cardiologist actually travel more than 2 hours to see the doctor: because no such specialist is anywhere closer to their more rural home.

So what is the catch? Doctors still earn very well in the United States and usually they have access to the best medical technology in the world, why are there not more immigrant doctors? The truth is, a vast number of physicians in the United States actually are immigrants. And truth is, too, that the immigration process is very cumbersome, takes a long time and can be very frustrating. But, with the help of an immigration attorney, it can be mastered. And the doctors and their helping hands will be welcome!

If you are a physician interested in immigrating into the United States let us know. We will be happy to consult you about your possibilities.

The staff of the Law Offices of
Wolf W. Kaufmann and I wish
all our clients a Happy Hanukkah
and a Merry Christmas. May you
all have a blessed new year.