

Legal Times

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The Attorney's Corner

Let us talk law today.

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Noncitizens and Unlawful Presence Bars

“Unlawful presence” is a term that is used for noncitizens. Unlawful presence is defined as follows:

“An alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.”

INA § 212(a)(9)(B)

Where a noncitizen is trying to be admitted to the United States, these bars are imposed if the noncitizen accrued certain periods of unlawful presence in the U.S. An unlawful presence bar is triggered if the noncitizen departs from the U.S. We will discuss the three unlawful presence bars.

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Recent Immigration News

Recent changes which may affect you.

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USCIS Continues to Accept FY 2011 H-1B Petitions

U.S. Citizenship and Immigration Services (USCIS) announced it continues to accept H-1B nonimmigrant petitions subject to the Fiscal Year 2011 (FY 2011) cap. USCIS will monitor the number of petitions received for both the 65,000 general cap and the 20,000 U.S. master's degree or higher educational exemption.

USCIS has received approximately 13,500 H-1B petitions counting toward the 65,000 cap. The agency has received approximately 5,600 petitions for individuals with advanced degrees. Should USCIS receive the necessary number of petitions to meet the cap, it will issue an update to advise the public, that the FY 2011 H-1B cap has been met as of a certain date. The final receipt date will be based on the date USCIS physically receives the petition, not the date that the petition has been postmarked.

To ensure a fair system, USCIS may randomly select the number of petitions required to reach the numerical limit from the petitions received on the final receipt date. USCIS will reject cap subject petitions that are not selected, as well as those received after the final receipt date.

Petitions filed by employers who are exempt from the cap or petitions filed on behalf of current H-1B workers who have been counted previously against the cap within the past six years will not count toward the congressionally mandated H-1B cap. ❖

*U.S. Citizen and Immigration Services. Updated
4/8/10.*

Three-year bar: The three-year bar is imposed on the noncitizen (a person other than a permanent resident) and makes the noncitizen inadmissible under the following conditions:

- The noncitizen was unlawfully present in the United States for more than 180 days but less than a year;
- The noncitizen voluntarily departed the United States whether or not the departure is prior to the commencement of proceedings; and
- The noncitizen again seeks admission within three years of the date of their departure or removal.

10-year bar: A 10-year bar may be imposed on a noncitizen other than a permanent resident and makes the noncitizen inadmissible under the following conditions:

- The noncitizen has been unlawfully present in the United States for a year or more; and
- The noncitizen seeks admission to the United States within 10 years of the date of their departure from the United States.

Permanent bar: A noncitizen is permanently barred if he:

- Has been unlawfully present for an aggregate period of one year; or
- Has been ordered removed and subsequently entered or attempts to enter the United States without being admitted.

There is only one exception to the permanent bar. This exception is referred to as the *10-year exception*. The permanent bar does not apply where a noncitizen seeking admission more than 10 years after their last departure from the U.S., is granted permission to reapply by the Attorney General prior to re-embarkment at a place that is outside the United States.

There are several waivers that may be available for the three-year bar and the 10-year bar; however, there is only one waiver available for the permanent bar. The VAWA waiver is the only waiver that is available for the permanent bar. A VAWA self-petitioner who can demonstrate a connection between the battering or extreme cruelty and his departure or removal from the United States may subsequently reenter using this waiver.

There are certain categories of noncitizens whose unlawful presence in the United States is not a factor as it relates to admissibility. You may want to contact an immigration attorney to discuss these categories of persons. ❖

Important Links and Resources for your Legal Research

Visa Bulletin for March 2010:

http://www.travel.state.gov/visa/frvi/bulletin/bulletin_4659.html

USCIS page for processing time reports and individual case status:

<https://egov.uscis.gov/cris/jsps/index.jsp>

USCIS - list of physicians for adjustment:

<http://www.uscis.gov/civilsurgeons>

Georgia Child Custody Laws:

<http://law.findlaw.com/state-laws/child-custody/georgia/>

Office of Child Support Services:

<https://services.georgia.gov/dhr/cspp/do/public/SupportCalc>

DIVORCE AND INVASION OF PRIVACY

Georgia has long recognized the right of privacy for an individual to be let alone. Every individual has a personal right to use his or her property and that individual's right must be respected by others. This right can be divided into four categories: (1) intrusion upon the plaintiff's seclusion or solitude or into their private affairs; (2) public disclosure of embarrassing private facts about the plaintiff; (3) publicity which places the plaintiff in a false light in the public eye; and (4) appropriation for the defendant's advantage, of plaintiff's name or likeness.

The first category, intrusion into the plaintiff's seclusion or solitude is the most common category that comes into play in divorce cases. This involves prying or intrusion which would be considered offensive or objectionable to a reasonable person in that person's private affairs. This prying and intrusion extends beyond physical intrusion to that of prying and intrusion into a person's private affairs. For example, eavesdropping and spying on the plaintiff may be a privacy violation.

Georgia law does not require physical intrusion to establish a claim for invasion of privacy. For example, in Anderson v. Mergenhagen, 283 Ga.App. 546, 552(2), the Appellate Court reversed a ruling by the trial court when the trial court dismissed a claim by the plaintiff for invasion of privacy. This case was based on the ex-wife's stalking claim against the ex-husband contending that on many occasion he followed her in his automobile, took many pictures of her, made obscene gestures, and placed her in a frightening condition. The Georgia Appellate Court reversed on the basis of invasion of privacy. ❖

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