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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Q&A With Montgomery McCracken's Ralf Wiedemann

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Ralf D. Wiedemann

Ralf D. Wiedemann practices immigration law at Montgomery McCracken Walker & Rhoads LLP in Philadelphia, where he represents U.S. and multinational companies, universities, religious institutions and individual clients in a broad variety of employment and family-based immigration matters. His first immigration case, begun while still in law school 15 years ago, was a fiancee petition for his now-wife, who has since become a naturalized U.S. citizen.

Since January 2012, Ralf has served as honorary consul to the Federal Republic of Germany in Philadelphia. In this capacity he provides consular services to constituents residing in southeastern Pennsylvania and southern New Jersey. Ralf assists German citizens residing or traveling in the consular region, promotes German-American relations and meets with business and government representatives to foster relationships between Germany and the U.S.

Wiedemann also performs intake, review and initial processing of applications for German passports. Ralf currently serves as secretary of the Consular Corps Association of Philadelphia. In his spare time, Ralf is a vocal proponent of the Philadelphia independent music scene.

Q: What is the most challenging case you have worked on and what made it challenging?

A: Well, there was that very first fiancee visa case. No, that one was actually very straightforward, though I became acquainted right away with the concept of the “request for evidence” from the immigration service. Apparently, the form’s instructions notwithstanding, one was supposed to answer “none” to the question asking about any previous spouses rather than “N/A.” That early experience has continued to guide me to this day.

The most challenging case may have been one involving a marriage-based green card where the foreign national spouse had previously been found to have engaged in marriage fraud. An earlier marriage had not gone well. That couple had failed to produce much evidence of their cohabitation and comingling of finances, and by the time of their green card interview they were no longer living together. The immigration service notified them of its intent to deny the petition and the couple never responded. In its

denial notice, the U.S. Citizenship and Immigration Services specifically held that the marriage had been deemed to be fraudulent.

Now the foreign national was married to a different U.S. citizen and it was apparent to me that this was a real and stable relationship. The problem was that an immigrant is statutorily ineligible to be approved for a green card if that person has ever been found to have engaged in marriage fraud. The clients later told me that about a half-dozen other lawyers had refused to take their case, apparently due to the near impossibility of obtaining a green card in these circumstances.

We decided to take the direct approach: to convince the immigration service that the immigrant's first marriage was not in fact fraudulent. Basically, we put forth as much evidence as possible that although the marriage was a failed one, it was not a fraudulent one. And we stressed that the USCIS' conclusion in the earlier case was not binding on the subsequent petition. It was by no means obvious that we would succeed, but in the end the USCIS adjudicator agreed that we had demonstrated that the first marriage had not been fraudulent and approved the petition based on the second marriage.

Q: What aspects of your practice area are in need of reform and why?

A: The current processing times for applications for permanent labor certification leading to a green card are impossibly long and should be dramatically reduced for the program to function properly. Currently the U.S. Department of Labor performs its initial review of an application six months after filing. If the Department of Labor then decides to audit the application and review the employer's evidence of regulatory compliance, the total waiting time is 21 months from the date of filing. About 30 percent of applications are audited, so a large number of cases languish for nearly two years before the Department of Labor issues a decision. Should the decision be adverse, there may not be sufficient time for the employer to start the process over before the would-be immigrant runs out of time on his or her temporary work visa and needs to depart the U.S.

For many immigrants, the path to a green card is through sponsorship by an employer. This path typically involves the employer testing the local labor market to determine if there are any qualified and available U.S. workers for the job it wishes to offer permanently to the immigrant. If the employer does not find any qualified U.S. workers, it files an application for permanent labor certification with the Department of Labor.

Ten years ago, the Department of Labor instituted the current regulatory scheme and application process for labor certification, referred to as Program Electronic Review Management. Whereas the application process previously had been notable for regional differences and long processing times, the new, centralized PERM system was based on the idea of online filing with employer attestations of compliance with the PERM regulations in recruitment and record keeping, subject to Department of Labor audits.

For several years this new process greatly sped up processing times and provided greater consistency and predictability. Also, in the event of an adverse decision, an employer had sufficient time to start over and file again. This quick turnaround was important because the advertisements and other recruitment steps had to be less than 180 days old at the time of filing, or the employer would have to start the entire lengthy and expensive recruitment process over again before being able to file.

At today's processing times, even the applications that are not audited are not reviewed quickly enough to permit an employer to file a new application, even if the cause of the denial was a simple typographic error, such as the transposition of the dates that a newspaper ad ran. The processing times are lengthy

not due to active investigation or decision-making; rather the applications are sitting in a queue for most of this time. It should be a priority to greatly reduce the waiting time for U.S. employers to receive a decision on their PERM applications, so that the system can once again function as intended.

Q: What is an important issue relevant to your practice area and why?

A: An important issue is the common misperception that immigrants somehow take away jobs from hardworking Americans, a baseless assertion that serves to convince people to oppose increased levels of immigration or any immigration at all.

Recently I've seen more articles drawing attention to the fallacy of the existence of a finite number of jobs in the U.S. economy, and of the drain on resources and opportunities that immigrants supposedly create. In fact, the presence of additional workers in our economy necessarily also means an increased number of consumers, who require the increased services of those who are already in the workforce, thus increasing the need for more workers.

I believe that a dispassionate look at the resulting benefits to the U.S. economy would show that we can and should accommodate a stronger flow of legal immigration. Of course, that's what one would expect an immigration attorney to say, but I believe that if one considers the issue objectively then the conclusion makes sense.

Q: Outside your firm, name an attorney in your field who has impressed you and explain why.

A: An immigration attorney who never ceases to impress me is Margaret Stock. I have never met her, but her influence on and expertise in the field is immeasurable. She is regarded as the foremost expert on the intersection of U.S. immigration law with individuals in the U.S. military and the family members of U.S. service members. She is based in Anchorage, Alaska, and is known nationwide as the person to approach with questions concerning immigration matters that affect someone serving in the military.

Margaret regularly contributes to the listserv for the Military Assistance Program, a service of the American Immigration Lawyers Association that matches military service members and their families with volunteer attorneys who represent the military families pro bono. Very few days go by without an update from Margaret on relevant issues affecting this population, or insightful answers based on her vast experience to questions posed by other members of this program. I have the utmost respect for what she does for U.S. service members and for attorneys who seek to help them.

Q: What is a mistake you made early in your career and what did you learn from it?

A: I confess that I made the classic mistake that one is always warned about: Don't ask a witness a question if you don't already know how the witness will answer it.

In an asylum hearing I asked an expert witness about a certain type of documentation that would have been issued by authorities in the foreign country, and the expert responded — much to the surprise of the judge, government attorney and, embarrassingly, me — that the government in question would never have issued such a document.

Of course, the applicant for asylum had submitted just such a document and testified about it a short while ago, regrettably before the expert witness had entered the courtroom. The lesson, of course, was never to assume anything regarding a witness's testimony.