

Finding the Right Immigration Lawyer

At some point during your stay in the U.S. it may be necessary for you to seek the assistance of an immigration lawyer. As with all professions, there are many qualified, competent immigration lawyers, and some that are not. Unfortunately, there is no reliable directory to assist you in determining which ones are good and which ones are not. This handout provides you with some general guidance on choosing a lawyer and also provides you with an overview of information you should be aware of when working with the lawyer and his/her staff.

There are a number of lawyers to choose from; and with more than 7,500 immigration lawyers practicing in the U.S., the process of selecting just the right one can be difficult. The lawyer should be able to provide you with a preliminary analysis of your case and a plan for achieving your goals. A good immigration lawyer should be able to give you an honest and thorough assessment of your case and be able to explain the options that are available to you based on not only the current law, but also changes that are in the legislative and judicial pipeline at any given time. The lawyer can then work with you to prepare your case and represent you in front of the administrative agency handling your application. The lawyer should be able to explain to the government agency why your case meets the requirements of the law and if problems arise, will use additional resources to help resolve the issue or prepare your case for an appeal.

Do Your Homework

- Know what your goals are and do some basic research—but also be aware that immigration law can be very complex and a little bit of knowledge is a dangerous thing. There is a lot of information out there but not all of it is accurate.
- Be honest in your dealings with the lawyer as they need to have a clear, accurate picture of your situation. If you have worked without permission, neglected to file tax forms or been arrested the lawyer needs to know as it may affect your immigration options. Remember that your discussions with the lawyer and his/her staff are confidential.
- Gather all your immigration documents, which include any documents relating to your education, accomplishments, marriages, divorces, birth of children, arrests or convictions, etc.

Factors to Consider When Hiring a Lawyer

Fees – An important factor in choosing a lawyer is his or her pricing structure. The temptation is often to seek the least expensive lawyer possible. While your bank account may appreciate this strategy, it could prove to be short-sighted if this is the main factor in choosing your lawyer. Lawyers' fees vary greatly. There are two primary methods of pricing: an hourly rate or a flat fee. Occasionally, the lawyer may propose a mixed pricing structure. It is important that you understand how you will be charged for work on your case.

Hourly Fees:

Many lawyers charge by the hour based on the time they and their staff spend working on your case. If your case is simple and does not require much time, this may be appealing to you. However, if your case is labor intensive, the hourly fees



will add up quickly. You will pay not just for the time the lawyer spends working on the case, but also for the time each paralegal and legal assistant works the case as well. This also includes time when they are discussing your case amongst themselves and all the time you spend on the phone with them. Some lawyers charge a different rate for their time as opposed to the time of their support staff.

Flat Fee: Many lawyers use a flat fee for “routine” cases such as an H-1B or Labor Certification application. In this pricing model, you and the lawyer agree on the price ahead of time, regardless of how long the case may take to work. In this model, it is to the advantage of the lawyer to work your case as efficiently as possible. If unexpected complications arise that change the nature of your case, it may be necessary to re-negotiate the contract.

Combination: With some complicated cases, a lawyer may not be able to assess a flat fee up front as it may not be certain how much work is involved in the case. The lawyer may suggest that the case be handled on an hourly basis. Since some cases can result in significant number of billable hours, you may wish to explore the possibility of converting the case to a flat fee after the legal fees have reached a certain figure. This would serve to limit the expense from your end and deter the firm from running up your fees. However, if your case involves considerable amount of court time and preparation, this may not be an option.

Other Costs: Filing Fees, Copies, etc.

In addition to the legal fees, it is important to understand what other costs you may be expected to pay. Ask about these costs up front as they may add significantly to the cost of your case:

Photocopies: How much does the firm charge for copies? Since you should receive copies of all documents filed with the government, the per-page cost, if any, could quickly add up, particularly if the type of petition or application files involves considerable supporting documentation. Are there separate charges for getting a copy of your file after the case is closed?

Filing Fees: Are you responsible for paying any government filing fees? How much are they? When must they be paid?

Services: Does your case require documents to be translated? Do your credentials need to be evaluated? Are DNA tests needed to establish relationships for family-based immigration? If so, who pays them and when are these costs payable?

The Retainer

After the initial consultation the lawyer should send you a retainer agreement to sign. This agreement formalizes your relationship with the lawyer and establishes the scope of the case. It will include what the case is (i.e. an H-1B filing, a J-1 waiver, a case for permanent residency), the legal fees, the costs you will pay and when you are expected to pay them. **Read this document carefully and understand the terms of the representation agreement.**

Disciplinary actions – Has the lawyer ever been disciplined by the Board of Professional Responsibility of the state bar? There are also people who falsely claim to be licensed lawyers. Your the American Bar Association or your state bar association is the place to check that the lawyer is licensed and in good standing. Visit the American Bar Association (www.abanet.org) for more resources.

Community reputation – Has the lawyer established a good name for himself or herself in the community? If your lawyer has a sterling community reputation, chances are it was earned through hard work.

Client references – A strong reference from a friend or colleague is often the best indicator of whether a lawyer is up to snuff.

Focus of practice – Within immigration law, there are a variety of subspecialties – employment, family, asylum, deportation, etc. Consider going with a lawyer with a strong background in your particular type of case.

Immigration exclusive practice – Many lawyers list immigration law as one of a variety of types of matters they handle. It is tough enough for a full-time immigration lawyer to keep abreast of all of the developments in the practice area. It is nearly impossible to be a top-notch immigration lawyer while trying to balance being an expert in many other practice areas as well. While someone can be a good immigration lawyer and also be very competent in another practice area, watch out for lawyers where immigration is one practice area on a laundry list of claimed specialties. Make sure that the lawyer that you choose is a member of the American Immigration Lawyers Association (AILA). AILA is probably the immigration lawyer's best resource for up-to-date information. While being an AILA member is not a sure sign of quality, it may indicate that the lawyer is keeping up with this rapidly changing field of law.

Years of practice – Much of immigration law is unwritten and the longer one is in practice, the better one's instincts become. But the opposite can be true as well. Lawyers who have been practicing for years may become lazy about staying up to date on the latest changes. Some of the worst lawyers practicing immigration law in this country are the ones who have been around the longest. So try and strike a balance.

Lawyer to paralegal ratio – One of the ways immigration practices are attempting to keep costs down is to hire paralegals and legal assistants to do much of the work that immigration lawyers used to do on their own. In some markets, this may be the only way to keep costs low enough for people to afford to hire a lawyer. But you should know what you are paying for. Some of the most expensive immigration firms still with extremely high ratios of paralegals – sometimes as high as ten paralegals per lawyer. A more modest ratio of one to two paralegals per lawyer may mean that the firm is not too overloaded with work and it may mean that the lawyer you thought you were hiring actually knows what is happening on your case and has the time to speak with you about your case.

Caseload – Is your lawyer taking on so much work that there is no way cases can properly be handled? Too many lawyers don't know when to draw the line and either say no to taking on additional work or to make the decision to take on more lawyer and staff.

Use of technology – Technology has revolutionized the practice of immigration law probably as much as any other area in the legal profession. Does your lawyer use email? Does the lawyer have the latest research and case management software? Does the lawyer provide electronic newsletters and email alerts to inform clients of breaking news? Does the firm have an extranet that allows you to log in to a private and secure web site to see what is happening on your case? Does the firm file applications electronically? Lawyers who master technology deliver legal services with better quality and can often leverage technology to deliver legal services less expensively.

Communication – The number one complaint against lawyers in this country is not poor work quality. It is failing to communicate with their clients. You are paying a lot of money to hire a lawyer and it is your right to expect to be kept informed of developments and have your calls and emails returned in a timely manner. On the other hand, there is still such a thing as excess and calling your lawyer everyday to find out what is happening on your case is not necessarily fair either.

Board certification – A few states certify lawyers in the practice of immigration law. If your lawyer practices in a state that does, make sure he or she has this credential. It is no guarantee of quality, but it can certainly be an indicator.

Educational background – While many fine lawyers have come out of mediocre law schools and lousy lawyers come out of the best law schools, where a lawyer went to school can still be an indicator of a person's ability to achieve.

Publications – Lawyers who write frequently about their practice area tend to be better informed about their area of law. The ability to get published also may indicate that the lawyer's expertise is respected.

Promotional materials – Pay attention to a law firm's marketing and promotional materials. Are they professional and polished or do they make the firm appear shady and untrustworthy? How the firm presents itself to its clients and potential clients may be an indicator of how the firm will present itself – and, consequently, you – to the U.S. Department of Homeland Security (DHS).

Conflicts of interest – Immigration lawyers often have an inherent conflict of interest, particularly in business immigration matters where they are assisting an employer and employee at the same time. Most of the time this is not a problem. However, pay close attention if interests should diverge, such as when an employer and employee start to have problems getting along.

Industry focus – A number of immigration lawyers focus on particular types of employers and have become particularly adept at handling visa matters in their industries. For example, a small number of immigration lawyers in the U.S. represent a majority of physicians applying for visas because of the peculiar difficulties present in these types of cases.

Personality compatibility – Your experience with your immigration lawyer is more than just the result of lawyer's experience and competency. A lawyer's "bedside manner" can mean a lot at the end of the day to how the overall experience goes. Find a lawyer who really seems to care about your case.

Engagement letters – Read the fine print in your engagement letters. Some lawyers load agreements down with so much "legalese" and one-sided provisions that it should give you pause. Consider using a lawyer who provides an agreement that is written clearly and that appears to be evenhanded.

Local vs. national – Unlike most fields of law, the location of your immigration lawyer is not nearly as important as you might think. Immigration law is strictly federal in nature. This means that it is basically the same across the country and a lawyer in one state practices under the same system as in every other state. Immigration law is almost entirely administrative as well. That means that most petitions are submitted by mail and personal appearances by an immigration lawyer are becoming less and less common.

It is recommended that you get a local immigration lawyer if your case involves appearances before local immigration judges or the local U.S. Citizenship & Immigration Services (USCIS) district office. In these cases, local lawyers know the personalities and procedures of the local immigration office better than someone across the country. If your case involves filings at a regional service center or dealings with consulates, then it doesn't matter where your lawyer's office is.

Language skills – Some clients who are not native English speakers may feel more comfortable working with a lawyer fluent in their language.

Ethics – Run as fast as you can from lawyers that tell you it is okay to lie or otherwise act dishonestly in your case. Aside from the obvious questions of morality, you are risking jail time and potential lifetime banishment from the United States.

The Initial Consultation & Fee

The first step in hiring a lawyer is the setting up an initial consultation. Consultations can be in person at the lawyer's office or over the telephone. Prior to the consultation, you will be asked to complete an initial intake form and send copies of current immigration documents. To make the most of your consultation, you should get these documents to the lawyer prior to the consultation so they can be reviewed and analyzed ahead of time. Consultations may range anywhere from 30 minutes to an hour.

Many lawyers do charge for the initial consultation. As it takes a lawyer time to read through your documentation and provide a legal analysis. Time spent on your case in these initial stages is time not spent working on cases for other clients. Some lawyers will deduct the price of the consultation from their legal fees if you decide to retain them for your case within a certain period of time.

What If You Just Cannot Afford a Quality Immigration Lawyer?

Many people will just never realistically be able to hire an immigration lawyer due to the costs involved. There are sometimes still options that will allow you to utilize the services of an immigration lawyer. Many lawyers work with "pro bono" legal organizations in their communities and accept a limited number of no-fee or reduced-fee cases. Keep in mind that you will typically need to be screened by one of these community organizations to determine that your case is appropriate for a referral and to determine if you truly are unable to pay.

More and more lawyers are starting to "unbundle" their legal services and offer "a la carte" legal services. This means that instead of handling a case from beginning to end, a lawyer will prepare only parts of the case or simply provide the client with a lawyer's expertise. Perhaps you want to submit your green card application yourself, but would like to consult with a lawyer and have them review your application. A lawyer who unbundled their services might work with you to provide just the amount of expertise you absolutely need and can afford. The practice is still controversial in some segments of the legal community, but organizations like the American Bar Association are openly embracing the concept.

What If Your Lawyer Mismanages Your Case?

Unfortunately, the question of what to do when you have hired a bad lawyer is more than just theoretical for many. The answer largely depends on the facts of your case. First, determine whether the problem is really the lawyer's fault. In many cases, people complain that their lawyers are ineffective when, in fact, the problems are beyond the lawyer's control. This is especially true with DHS backlogs.

If your lawyer truly has made a mistake but you think the mistake is honest and does not reflect deeper problems relating to competency, it may be easier to work with the lawyer in resolving the matter than in just switching to a new law firm. If you question the competency of your lawyer, you may want to get a second opinion from another lawyer.

If your lawyer grossly mismanages your case, you have two remedies. You can file a complaint with the board of professional responsibility for the bar that licenses your lawyer. You also have the option of suing the lawyer for legal malpractice.

At the end of the day, making yourself an educated consumer of legal services will improve your chance for your case to manage successfully. That means learning as much as you can about immigration law so that you can work with your lawyer to achieve the best solution possible for your case.

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