

TEXAS SOUTHERN UNIVERSITY
THURGOOD MARSHALL SCHOOL OF LAW
FAMILY BASED IMMIGRATION LAW COURSE # 564
SPRING 2018 SYLLABUS

- I. Maurice Hew, Jr.*
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II. MEETING TIMES

Monday, Wednesday, and Friday from 12:00 -12:50 p.m.

Holidays

Martin Luther King Holiday	January 15, 2018
Midterm week	March 5, 7, & 9, 2018 We will have an examination during this week.
Spring break	March 12, 14, & 16, 2018
Good Friday	March 30, 2018

III. LOCATION

TMSLAW ROOM 211

IV. OFFICE HOURS

By Appointment. I would like to schedule them before the class. I am free to meet on or off campus but my office location is 100 G in the legal clinic.

V. COURSE TEXTBOOK

Students will be required to research Immigration statutes and regulations. Students will also be assigned cases to read and study, to learn how family immigration laws are applied. Students will also be required to review miscellaneous memorandums and documents. Students might also be required to review the laws of foreign countries.

I will be using the Immigration Law Handbook ISBN: 9781522132011 published by Lexis Nexis.

VI. COURSE DESCRIPTION

This three hour course explores the theories, procedures, and practices relating to US family based immigration laws, as interpreted and applied by courts, tribunals, and government officials. Historically, family reunification has been the principal policy underlying US immigration law. Family based immigration allows for close relatives of US citizens and lawful permanent residents to immigrate to the United States. Consistent class preparation and participation are essential to acquire an understanding of this topic; students will have assigned readings as background for class discussion and analysis of problems presented. The final grade will be based on class participation, midterm, and the final examination.

VII. STUDENT OUTCOMES

At the end of this course, the student is expected to have the requisite skills necessary to legally immigrate a foreign born individual through family relationship. The student is also expected to provide the pertinent authority which forms the basis for their opinion.

VIII. ATTENDANCE POLICY

Students are required to comply with the attendance policy in the TMSL Rules and Regulations Handbook which this professor cannot change.

IX. GRADING POLICY

There will be one midterm examination for this course which will account for 35% of the student's grade. There will be one final examination for this course which will account for 65% of the student's grade. Class participation is encouraged. Class participation can account for up to 5% of the student's grade.

X. CALENDAR

Please review the immigration statutes and cases for the corresponding dates below.

JANUARY

- 1) January 8 Introduction to Family Based Immigration Law
- 2) January 10 Sources of Law for Family Based Immigration Law
INA §101(a)(20) Lawful permanent residence
- 3) January 12 Immediate relative v preference classifications

Immediate relatives INA§201(b)(2)
Preference Classifications INA§203(a)(1-4)
Please review the State Department’s visa bulletin for the month of January 2018.

Definitions
- 4) January 17 **Parent, Father, or Mother INA §101(b)(2)**
Medina-Morales v. Ashcroft, 371 F.3d. 520 (9th Cir.2004).
- 5) January 19 **Child**

INA§101(b)(1) Unmarried and under the age of 21
INA§101(b)(1)(A) Wedlock
Retroactivity,
Matter of Bardouille, 18 I& N Dec. 114 (BIA1981).
Fiallo v Bell, 430 U.S. 787 (1977).
INA§101(c)
- 6) January 22 **Stepchildren INA §101(b)(1)(B)**
- 7) January 24 **Out of wedlock**
“Active parental interest”
Matter of Moreira 17 I&N Dec. 41 (BIA 1979).
Matter of McMilan, 17 I&N Dec.605 (BIA 1981).
Matter of Bonnette, 17 I& N Dec.587 (1980).
Matter of Otiende, 26 I&N Dec.127 (BIA 2013).
Matter of Mowrer, 17 I&N Dec.613 (BIA 1981).
- 8) January 26 **Legitimation** INA§101(b)(1)(C)
Matter of Cabrera, 19 I&N Dec. 589 (BIA 1996).
Matter of Bueno, 21 I&N Dec.1029 (BIA1997).
Matter of Martinez, 21 I&N Dec.1035 (BIA 1997).
Matter of Torres, 22 I&N Dec.28 (BIA 1998).
Matter of Pagan, 22 I&N Dec. 547(BIA 1999).
Matter of Moraga, 23 I&N. Dec. 195 (BIA 2001).
Matter of Pagnere, 13 I&N Dec 688 (BIA 1971).

9) January 29

Illegitimate 101§(b)(1)(D)
Matter of Vizcaino, 19 I&N Dec. 644 (BIA 1988).

HAGUE CONVENTION v NONCONVENTION ADOPTIONS

10) January 31

Adoptions INA§101(b)(1)(E)
In Re Palelei, 16 I.&N Dec. 716 (BIA 1979).
Matter of Marquez, 20 I&N Dec. 160 (BIA 1990).
Matter of Xiu Hong Li, 21 I&N.Dec.13(BIA 1995).
Matter of Ma, 22 I&N Dec.67 (BIA 1998).
Matter of Rumonat ANIFOWOSHE, 24 I&N Dec.442(BIA 2008).
Matter of Huang, 26 I&N Dec.627 (BIA 2015).

FEBRUARY

11) February 2

Orphans INA § 101(b)(1)(f)
Matter of Greenwood, 18 I&N Dec.417 (BIA 1983).

12) February 5

Spouse
Matter of Lovo, 23 I&N Dec.746 (BIA 2005).
Matter of Kodwo, 24 I&N Dec.479 (BIA 2008).
Matter of Zeleniak, 26 I&N Dec. 158 (BIA 2013).

13) February 7

Marriage
Viability Matter of McKee,17 I&N Dec. 332 (BIA 1980).
Created Matter of Bautista,16I&N Dec.602(BIA 1978).
Legal Separation Matter of Lenning,17 I&N Dec. 476 (BIA1980).
Void Marriage Matter of Manjoukis, 13 I&N Dec. 705 (DD1971).
Denial Grounds Specificity Matter of Pradiou, 19 I&N Dec. 419 (BIA 1986)

14) February 9

Siblings
Matter of Ruzku,26 I&N Dec.731 (BIA 2016).
In Re Li, 20 I & N Dec. (BIA 1993).
Matter of Machal, 12 I&N Dec. 409(BIA 1967)

15) February 12

Widows
Matter of Minkova, 22 I& N Dec.1161 (BIA 1999).

16) February 14

Adam Walsh Act
Matter of Acejias-Quiros, 26 I&N 294(BIA 2014).
Matter of Introcaso, 26 I&N Dec.304(BIA 2014).

Matter of Jackson and Erandio, 26 I&N Dec. 314 (BIA 2014).
Matter of Calcano de Millan, 26 I&N Dec. 904 (BIA 2017).

- 17) February 16 **Nonimmigrant v Immigrant Intent**
30/60 day rule 9 FAM 40.63 N4.7
In Re Ibrahim, 18 I&N Dec. 55 (BIA 1981).
In Re Patel, 19 I&N Dec. 774 (BIA 1988).

CONSULAR PROCESSING v ADJUSTMENT OF STATUS

- 18) February 19 **Adjustment of status INA§245 v Consular Processing**
Exceptions to the bars INA§245(c)

Martinez v Mukasey, 519 F.3d 532 (5th Cir. 2008).

- 19) February 21 **INA §245(i) waiver**, Entry without inspection

- 20) February 23 **Maintaining status**, In Re Hall, 18 I&N Dec. 203 (BIA 1982).

Change of status INA§248
Extension of status

- 21) February 26 **Arriving alien/Parole**
INA§101(a)(13); INA§212(d)(5); 8 CFR§1.1 (arriving alien);
8 CFR§1001.1(q)
Matter of Arrabally and Yerrabelly, 25 I&N Dec. 771 (BIA 2012).
Conditional Parole
Matter of Castillo-Padilla, 25 I&N Dec. 257 (BIA 2010).

- 22) February 28 **Death of petitioner**
In re Varela, 13 I&N Dec. 453 (BIA 1970).
Hanford v Napolitano, 2009 WL 3073956 (USDC WD TX Sept. 2009).

MARCH

- 23) March 2 **Revocation of petitions**
INA §205; 8 CFR§§205.1 (Automatic) & 205.2 (Revocation on notice); Matter of Zaidan, 19 I&N Dec. 297 (BIA 1985)
Ghaly v INS, 48 F.3d 1426 (7th Cir. 1995).

- 24) Midterm examination

GROUND OF INADMISSIBILITY

25) March 19

Health Related Grounds and Waivers

INA §212(a)(1)
22 CFR §40.11
9 F.A.M. 302.2

26) March 21

INA § 212(a)(2) Crimes involving moral turpitude
“Domestic Violence”

Matter of Velasquez, 25 I&N Dec. 278 (BIA 2010).
Matter of H. Estrada, 26 I&N Dec. 749 (BIA 2016).

INA § 212(a)(2)(H)(ii) Beneficiaries of Trafficking
INA § 212(a)(2)(H)(iii) Sons and daughters’
exception

27) March 23

CIMT (continued)

Blanco v Holder, 624 F.3d 265 (5th Cir. 2010).
Silva Trevino, 742 F.3d 197 (5th Cir. 2014).

Aggravated Felony Sexual Abuse of a minor

Matter of Rodriquez-Rodriguez, 22 I&N Dec. (BIA1991).
Matter of Crammond, 23 I& N Dec. 38(2001), abandoned
by *Matter of Crammond*, 23 I&N Dec. 179 (2001).
Matter of Small, 23 I& N Dec. 448(BIA 2002).
Matter of V-F-D, 23 I& N Dec. 859 (BIA 2006).
Matter of Esquivel-Quintana, 26 I& N Dec. 469 (BIA
2015).

28) March 26

INA§212(a)(4) PUBLIC CHARGE

Evidence to support, Residency requirements, 40 quarters
Poverty guidelines, Joint sponsors
INA § 213(A), 8 CFR§ 213a.1, 8 CFR§213a.2

29) March 28

**INA §212(a)(6) Illegal Entrants and Immigrant
Violators**

Exceptions

Minors

VAWA Self Petitioners/ Battered Women and Children

APRIL

30) April 2

INA § 212(a)(9) 3/10 Bars of inadmissibility

Provisional I-601 A waivers 8 CFR§212.7(E)
Administrative closure
Matter of Avetisyan, 25 I&N Dec. 688 (BIA 2012).
Matter of W-Y-U, 27 I&N Dec. 17 (BIA 2017).

- 31) April 4 **INA§212(I) Fraud or willful misrepresentation of material fact**
Azar-Farr, “Fraud and Misrepresentation in the INA,” 17-12 Immigration Briefings, (Dec. 2017).
- 32) April 6 **Fiance’ v. Fiancee’ nonimmigrant visas (K)**
Please review statutes and regulations relating to nonimmigrant K visas.
- Military
Stock, “Parole in Place and Other Immigration Benefits for Military Family Members: An Update,”16-02 Immigration Briefings, (Feb. 2016).
- 33) April 9 **Special Immigrant Juvenile Status**
Please review the immigration statutes and regulations relating to SIJS.

Please review the Texas State Statutes as they define abuse, abandonment, and neglect.

Greene, “Paying Special Attention: The Changing Strategies For SIJS,” Immigration Briefings, (December 2016.)
- 34) April 11 **Conditional permanent residence status INA §216**

Matter of Anderson, 20 I&N Dec. 888(BIA 1994).
Matter of Mendes, 20 I&N Dec. 833 (BIA 1994).
Matter of Rose, 25 I&N Dec. 181 (BIA 2010).
- 35) April 13 **Motions**
Matter of Hasmi,24 I&N Dec.785 (BIA 2009).
Matter of Laumus, 25 I&N Dec.61(BIA 2009).
- 36) April 16 **U/T/V visas**
Please review statutes and regulations regarding U/T/V nonimmigrant visas.
- 37) April 18 **AGE/OUT and the Child Status Protection Act(CSPA)**

Carlson, “Child Status Protection Act, Hot Topics,” 14-01 Immigration Briefing (Jan. 2014).

Matter of Carbajal, 20 I&N Dec. 461 (BIA 1992).
Matter of Wang, 25 I&N Dec. 28(2009)
Khalid V Holder, 655 F.3d 363 (5th Cir. 2011).
Li v Renaud, 654 F.3d 376 (2nd Cir. 2011).
Osorio v. Mayorkas, 656 F.3d 954 (9th Cir. 2011).

Matter of Zamora-Molina, 25 I&N Dec. 606 BIA 2011).
Matter of Avila-Perez, 24 I& N. Dec. 78 (BIA 2007).

38) April 20

Appeals

Please review the statutes and regulations regarding appeals, including jurisdiction and jurisdiction preclusion over decisions on relative petitions.

39) April 23

Form Filling, fact/evidence gathering/affidavits

40) April 25

Wrap up

XI. Reading Assignments

The professor will confirm the reading assignments in advance of the individual lecture.

XII. Living Document

This is a living document and subject to change at the discretion of the professor without proper notice to the student.

Sexual Abuse of a Minor

Matter of Rodriguez-Rodriguez, 22 I&N Dec. 991 (BIA 1999)

The offense of indecency with a child by exposure pursuant to section 21.11(a)(2) of the Texas Penal Code Annotated constitutes sexual abuse of a minor and is therefore an aggravated felony within the meaning of section 101(a)(43)(A) of the Immigration and Nationality Act, 8 U.S.C. §1101(a)(43)(A) (Supp. II 1996).

Matter of Crammond, 23 I&N Dec. 38 (BIA 2001) (vacated by Matter of Crammond, 23 I&N Dec. 179 (BIA 2001))

(1) A conviction for "murder, rape, or sexual abuse of a minor" must be for a felony offense in order for the crime to be considered an aggravated felony under section 101(a)(43)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(A) (Supp. V 1999).

(2) In determining whether a state conviction is for a felony offense for immigration purposes, the Board of Immigration Appeals applies the federal definition of a felony set forth at 18 U.S.C. § 3559(a)(5) (1994).

Matter of Small, 23 I&N Dec. 448 (BIA 2002)

A misdemeanor offense of sexual abuse of a minor constitutes an aggravated felony under section 101(a)(43)(A) of the Immigration and Nationality Act, 8 U.S.C. §1101(a)(43)(A) (2000).

Matter of V-F-D-, 23 I&N Dec. 859 (BIA 2006)

A victim of sexual abuse who is under the age of 18 is a "minor" for purposes of determining whether an alien has been convicted of sexual abuse of a minor within the meaning of section 101(a)(43)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(43)(A) (2000).

Matter of Esquivel-Quintana, 26 I&N Dec. 469 (BIA 2015)

(1) For a statutory rape offense that may include a 16- or 17-year-old victim to be categorically "sexual abuse of a minor" under section 101(a)(43)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(A) (2012), the statute must require a meaningful age differential between the victim and the perpetrator. *Matter of Rodriguez Rodriguez, 22 I&N Dec. 991 (BIA 1999)*, and *Matter of V F-D-, 23 I&N Dec. 859 (BIA 2006)*, clarified.

(2) The offense of unlawful intercourse with a minor in violation of section 261.5(c) of the California Penal Code, which requires that the minor victim be "more than three years younger" than the perpetrator, categorically constitutes "sexual abuse of a minor" and is therefore an aggravated felony under section 101(a)(43)(A) of the Act.