Visa Denials Based Due To Immigrant Intent - Section 214(b)

Date: November 8, 2017

Cuevas, Garcia & Torres, P.A.

VANTAGE PROPERTY TITLE COMPANY

Andrew Cuevas, Esq. - President
e-mail: acuevas@cuevaslaw.com

Offices in Miami and Orlando

Tel: (305) 461-9500
Fax: (305) 448-7300

Mr. Andrew Cuevas, Esq., is the President of Cuevas, Garcia & Torres, P.A., and Vantage Property Title Company. Cuevas, Garcia & Torres, P.A., provides legal services in the areas of Community Association Law, Corporate Law, Real Estate law, and Business Immigration, including title insurance services through Vantage Property Title Company. If you have any questions regarding this article or any other questions, you may contact Mr. Cuevas at (305) 461-9500 or via e-mail at acuevas@cuevaslaw.com. The law firm has offices in Miami and Orlando. If you are interested in reading previous newsletters, please visit www.cuevaslaw.com, select the icon for **Newsletters**, and then choose the area of law you are interested in.

The Immigration and Naturalization Act ("INA") § 214(b) is the number one reason for nonimmigrant visa denials. It is referred to as "*failure to establish entitlement to nonimmigrant status*," or more commonly, "*presumption of immigrant intent*" because the majority of 214(b) denials are applied to intending immigrants. The INA states under Section 214b that:

> *Every alien shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for admission, that he is entitled to a nonimmigrant status...*

Therefore, consular officials are required to view every application as if the applicant intends to stay permanently in the United States until such time the applicant convinces the consular official that the intent is that of a nonimmigrant (temporary visitor). If the consular officer is not satisfied, he is required to deny the nonimmigrant visa application.

However, §214(b) is more than just an analysis of immigrant intent. Any failure to meet one of the specific requirements of the applicable visa category being sought results in 214(b) denial. For example, a student's F-1 visa application may be denied based on 214(b) if he fails to possess sufficient funds to cover educational expenses.

Tourist Visas (B visitors) and Student Visas (F students) are most affected by this section, however H-1B (professional workers) and L1 workers (managerial transfers) are exempt from

this requirement. Categories that do have immigrant intent provisions include B (tourist), E (treaty trader/investor), F (student), J (international student), M (vocational student), O-2 (support personnel for O-1 extraordinary ability persons), P (temporary employment for athletes, artists, entertainment groups), Q (cultural exchange), and TN (Treaty Nafta). Visa categories that do not have immigrant intent provisions include A (diplomat or foreign government official), C (in transit), D (crewmember), G Employee of international organization or NATO), I (media/journalist), K (fiancé), N, O-1 (extraordinary ability), R (religious employee), S (informant), T (victim of human trafficking), and U (victim of criminal activity).

The key is that the applicant for a visa where §214(b) applies must be able to show strong ties to their home country for which you have no intention to abandon. "Strong ties" may be cultural, social, professional, or any aspect of your life that has a binding effect between you and your country of residence. Family members, a job, a steady source of income, a house, an investment and bank accounts are all examples of "strong ties."

If a foreigner is denied under Section 214(b), they will be allowed to reapply if they obtain new evidence so support their case. There is no specific time restriction on resubmitting an application after a refusal. However, if there is no new evidence, it is likely that the visa application will be rejected again.

This article is solely a partial explanation of all the issues related to the topic of this newsletter, and is not to be considered legal advice. Persons interested in obtaining more information on the requirements to obtain a visa to enter the United States should consult with their legal counsel to obtain explanations of all issues addressed herein.