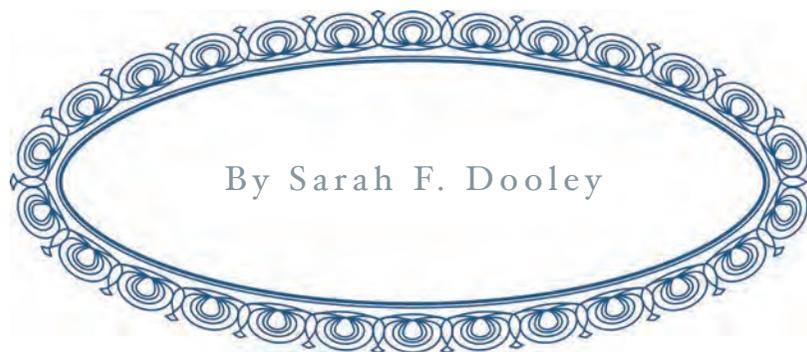


NAVIGATING THE BORDER BETWEEN INJURY CLAIMS & CITIZENSHIP STATUS



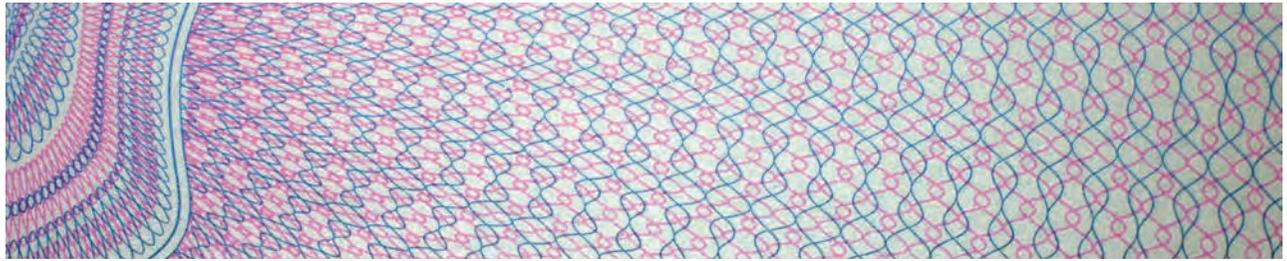
By Sarah F. Dooley

Immigration and citizenship status is a hotly contested issue these days – socially, politically and legally. Particularly in the context of personal injury litigation and especially as it relates to construction accidents, it is important to know what relevance it has, if any, and its general admissibility in the courtroom.

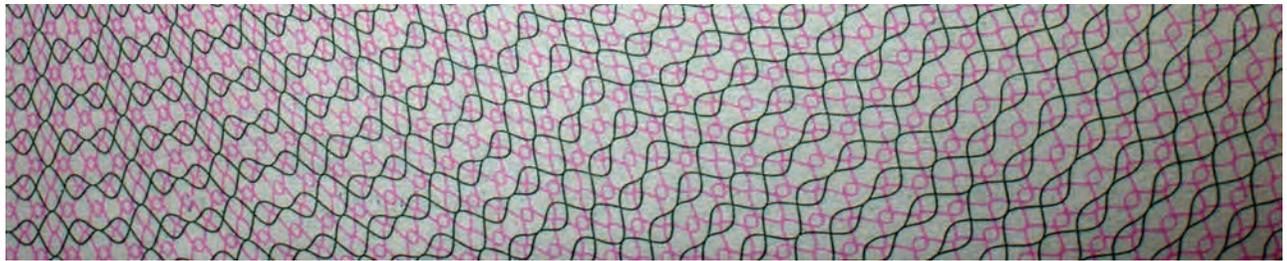
Most defense attorneys attempt to argue immigration status in a strategic effort to reduce estimates of damages. Naturally, plaintiff attorneys will typically counter that their clients' citizenship has little or no bearing when it comes to the merits

of the case. But, even more important, an attorney on either side must remove his or her personal opinions regarding the issue from the equation, in order to ensure that they are approaching their work zealously, fairly, and competently; for when they do, they stand the greatest chance of prevailing.

To start with a key point, it is important to note that, whether or not one is a citizen of the United States, he or she is still afforded rights and protections under the U.S. Constitution. Individuals, even those here "illegally," are persons guaranteed due process. Each person is entitled to equal protection of the law. As such,



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The case to which most attorneys initially look when researching immigration status in Pennsylvania, with respect to an injury matter, is *Hagl v. Jacobs Stern & Sons, Inc.*, 396 F. Supp. 779 (E.D. Pa. 1975). In *Hagl*, the Third Circuit stated, when it comes to an injury, it basically doesn't matter whether they are a citizen or not, and evidence as to the citizenship status cannot even be introduced – unless, of course, deportation proceedings have begun. In the decision, the court noted that "every alien, whether in this country legally or not, has a right to sue those who physically injure him," even going so far as to stress the importance that the Fifth and 14th Amendments use the word "person," and not "citizen."

Other jurisdictions echoed this ruling, saying that evidence of immigration status without the existence of actual and current deportation proceedings is "unduly prejudicial" to the plaintiff and has no bearing whatsoever on a claim for future lost earnings. Both an appeals court in Florida and a Virginia federal court have cited immigration or illegal alien status as "prejudicial" and a "danger" in their influence on juries considering such matters.

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an issue in workers' compensation cases, with Pennsylvania courts consistently holding that a claimant's illegal alien status does not bar the award of workers' compensation benefits. The Pennsylvania Supreme Court has, however, limited an illegal immigrant's right to wage losses once. Thus, when an injured illegal immigrant is capable of modified duty employment, an employer is not required to show that jobs are available to the claimant because the injured worker would not be legally entitled to accept any employment in the United States. *Mora v. Workers' Comp. Appeal Bd. (DDP Contracting Co.)*, 845 A.2d 950 (Pa. Cmwlth. 2004).

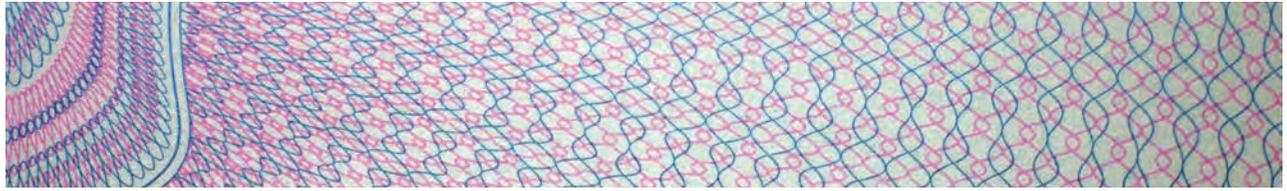
Just last year, the Pennsylvania Supreme Court decided a worker's compensation case dealing with an individual's citizenship status in *Cruz v. W.C.A.B. (Kennett Square Specialties)*, 99 A.3d 397 (Pa. 2014). Justice Debra McCloskey Todd wrote that it was not the employee/immigrant's burden to prove that he was eligible for employment, but rather the employer's burden to prove that the employee's loss of earning capacity was due to his employment eligibility (read: immigration) status, and not the injury itself. The court even took it a step further by noting that the employee's invocation of his Fifth Amendment right to self-incrimination when asked if he was an illegal alien was in no way proof of ineligibility

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and alone could not permit the employer to meet his burden of compensating the man.

On the opposite side of the coin, defense attorneys try to use the U.S. Supreme Court's decision in *Hoffman v. NLRB*, 535 U.S. 137 (2002) to support the notion that illegal and/or undocumented workers should not be entitled to certain damages in personal injury litigation. Specifically, defense attorneys argue that, in the realm of future lost earnings, damages should be limited since, after all, the individual is not legally able to work in this country in the first place. While on the surface a good defense argument (or, at the very least a social one) can be made pertaining to *Hoffman's* ruling, it is important to note that subsequent court cases have limited the holding in *Hoffman* to claims dealing specifically and only with the wrongful termination of an employee.

Another seemingly favorable defense case, *Ruiz v. Unemployment Comp. Bd. of Review*, 911 A.2d 600 (Pa. Commw. 2006), must also be read and interpreted as to the facts dealt only in that specific, particular circumstance. While *Ruiz* discusses citizenship status of an immigrant, it deals more with whether said individual was still eligible for unemployment compensation benefits. In its ruling, the Pennsylvania Commonwealth Court relied on the Unemployment Compensation Law of Pennsylvania, a statute that is often not at issue in personal injury litigation or with regards to claims for future lost earnings. *Ruiz*, like *Hoffman*, is a case that both defense and plaintiff attorneys must understand in terms of limited reach and specific factual considerations.

Plaintiffs whose cases are threatened by any deportation action recently received a boon in the form of the Obama

administration's Deferred Action for Parental Accountability (DAPA) program announcement. DAPA provides for "deferred action" for any illegal immigrant who meets four requirements: 1) is present illegally in the United States; 2) has been here continuously since Jan. 1, 2010; 3) is the parent of a U.S. citizen born before Nov. 20, 2014; and, 4) is not a priority for deportation. "Priorities" for deportation include those who are "criminal" aliens, prior deportees, and national security risks, among others. If an individual does in fact fall within the realm of the DAPA requirements, this program is yet another tool that can be quite useful for both plaintiffs and defendants in terms of arguing for or against the admissibility of an individual's citizenship status. Interestingly and not surprisingly, DAPA was the subject of a temporary injunction on Feb.16, 2015 by U.S. District Judge Andrew Hanen of Texas. The Justice Department has indicated their intent to appeal.

Regardless of being on the plaintiff or defense side, attorneys faced with a matter where citizenship status will come into play must be ready to present and diffuse arguments pertaining to the issue. The cases discussed here deal with narrow circumstances that in most instances cannot be applied across the board. Therefore, it is critical to be cognizant – even over prepared – on this issue, because when it comes right down to it, even if an individual's citizenship status may appear to be extremely relevant, it is always in the judge's discretion to preclude such evidence. ■

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