

PROFILE IN Immigration Workplace Law

“Immigration always has been an integral part of my life.”

BY SHARI L. BIEDIGER

Into a place in time rife by complex statutes, countless compliance laws, ubiquitous acronyms and rigorous reporting, walks an unassuming 75-year-old man to remind Ruth McChesney how simple it all really is.

He had taken the bus to get there, and he held a plastic bag neatly stuffed with documents. Determined to earn his citizenship, he struggled and studied and reach his goal.

“It was a very clean case; he had no real issues. But he took it seriously, made a great effort, and I saw what it would mean to this man,” says McChesney, an immigration attorney and managing partner with De Mott, McChesney, Curtright & Armendariz LLP, recalling his visits to her office seven years ago.

McChesney has managed the law firm for more than 11 years, and became Joe DeMott’s first partner in 2002. She currently oversees the business immigration and consular processing practice areas of the law firm.

The early years. I was born in Mexico, immigrated to the U.S. as a child, and grew up on the border in El Paso, Texas, in a Spanish-speaking home. I went to an all-girl Catholic school, where we had many foreign students, mostly from across the U.S.-Mexico border (Juarez). I crossed the border often to visit friends, go to dinner or attend a party. So, immigration has always been an integral part of my life. After high school, I went to college while working in a hospital as a unit clerk. During that time, I also had the opportunity to work with corporate, tax and litigation attorneys.

How did those early experiences lead you to pursue law? I was exposed to how the law touches us on a daily basis, from what appears insignificant to the more obvious. From the simple act of a patient signing the administrative and consent forms to the liability of medical professionals, the law came into play. Crossing the border was actually a legal process — sometimes coming across the border you would see select cars pulled over for secondary inspection where dogs sniffed and officers pulled cars apart and people were interrogated.

What did you learn in those years? I learned that respect for the law was important, but also understanding that because some laws may be well-intended — yet have an unjust result or application, or are just wrong — lawyers can change that through case law (litigation). However, the most important lesson I learned is respect for the individual; whether patient, doctor, lawyer, student or janitor. It’s not just a visa or a compliance audit; it affects the livelihood and future of that individual person or organization.

Describe your role at DeMott. I handle business/employment based consultations, so I meet with clients throughout the day whether via Internet, phone or in person, and set the legal strategy of the individual case. I review and work cases, meeting with the legal team to discuss progress. In addition to reviewing case law, statutes, agency policies/procedures,

In McChesney, the man who sought legal representation in pursuit of his citizenship would find a woman who followed the same basic hand-me-down formula of hard work she learned from her physician father — along with empathy, compassion and understanding.

“First and foremost, I take care of the client,” she says. “This requires listening. I treat people with respect and dignity, whether they are clients, employees, CEOs or officers.”

Those CEOs and employers also count on McChesney for her listening ear, along with the kind of solid advice that can keep even a “good company” out of trouble. Even here, she sticks to the fundamentals of law, while keeping tabs on the ever-changing landscape.

“Immigration and managing a busy law firm is dynamic,” she says. “In order to provide the best service to clients, it requires continuous review and assessment of laws, policies, procedures, staffing requirements, organizational structure, financial reports and technology.” ■

Ruth (Lozano) McChesney

Managing partner, De Mott, McChesney, Curtright & Armendariz LLP

Age: 49

Family: Married 23 years; a daughter, 18.

Education:

Bachelor’s degree, Accounting, UT El Paso; Law degree, St. Mary’s University

Career history:

Managing partner, De Mott, McChesney, Curtright & Armendariz LLP



Why it matters:

Lawyer Ruth McChesney offers important tips to keep your company in I-9 compliance.

relevant court decisions, I meet with the management team on firm projects, such as expansion, IT upgrades and staffing, and open and assign cases to the most appropriate legal team.

What advice do you have for business owners and HR professionals? First, establish a comprehensive compliance policy that includes ongoing training and hierarchy of designated responsible individuals. The policy should include, among other things, verification and record keeping provisions; anti-discrimination provisions; H1B posting, benching, record keeping, termination, maintenance of public access files, H1B dependency, Labor Condition Applications, and employees versus contractors and sub-contractors.

Second, conduct periodic internal I-9 and employer compliance audits. I recommend hiring an external company knowledgeable

and experienced in this area to conduct the internal audit. Even companies that don’t have any foreign nationals on staff can get into trouble if the I-9s are not properly processed and maintained. An internal employer compliance audit can avoid or mitigate exposure to fines, penalties, criminal charges.

Third, re-verify only as required and don’t over-document an I-9 — this can lead to fines or discrimination complaints. Also, don’t retain documents past the required period of time. Be sure to contact immigration counsel before a corporate change takes place, and before you hire or fire an individual with an immigration-related work status. Last, if your company needs dictate, plan long-term for a foreign national employee on temporary work visa.

What are the biggest mistakes company owners are making? They assume only “bad companies” get audited or get into trouble. They fail to understand the importance and legal requirements of the I-9s. For example, do you re-verify a lawful permanent resident whose card is expiring? Is it okay if I ask the employee for a U.S. birth certificate since they indicated they are a U.S. citizen? My lawful permanent

resident employee was sworn in as a U.S. citizen yesterday; should I re-verify the I-9? Business owners fail to understand the legal implications of a merger or an acquisition, and whether I-9s are involved or work visas such as TNs, H1Bs, Labor Certifications, I-140s, L1As, E2s, etc. Not revisiting and reassessing their employer compliance policies on an annual basis is another mistake. Some leave sections of the I-9 blank, or fail to retain I-9s for the requisite period of time. Another mistake is failing to contact their immigration counsel in response to an ICE audit/investigation, and failing to terminate an H-1B in accordance with the regulations. And some business owners make the mistake of using a contract when an I-9 is required.

What kind of legal trouble are company owners getting into? The penalty can range from fines and debarment from participation in a program to criminal charges. The fines can range from \$110 to \$16,000 per violation. Is it a one-time technical violation or are there substantive violations? Did the employer knowingly hire an unauthorized individual? The penalties can range from fines to criminal charges. Companies can also face discrimination charges and wage and hour law violation allegations/investigations.

SHARI L. BIEDIGER is a San Antonio freelance writer.