

■ **Exclusion of Experts; No Offer of Proof; Standard of Review.** Where the plaintiff's experts were excluded as the result of a motion in limine, the plaintiff proceeded to trial without the experts and without making an offer of proof, and the plaintiff then appealed the exclusion of her experts, the 8th Circuit rejected the defendant's argument that the exclusion of the experts should be reviewed only for clear error. The court found that a 2000 amendment to Fed. R. Evid. 103 did not require an offer of proof at trial, and that one recent 8th Circuit decision that held otherwise had ignored prior controlling 8th Circuit decisions. *Lawrey v. Good Samaritan Hospital*, ___ F.3d ___ (8th Cir. 2014).

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■ **Multiple Removals; Final Removal Untimely; Dissent.** Where the defendant removed an action on three separate occasions, the district court remanded the action following each removal, and the defendant appealed from the last of the three remands, the 8th Circuit held that because the district court's somewhat vague remand order relied on 28 U.S.C. §1447(c), it lacked jurisdiction over the appeal.

Judge Smith dissented, asserting that the 8th Circuit did have jurisdiction over the appeal, and that a portion of a case that constituted a separate "civil action" under 28 U.S.C. §1441(a) could be removed. *Arnold Crossroads, L.L.C. v. Gander Mountain Co.*, ___ F.3d ___ (8th Cir. 2014).

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IMMIGRATION LAW

ADMINISTRATIVE ACTION

■ **Employment Discrimination.** The U.S. Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices recently released its three-page "Fact Pattern Flyer" outlining examples of immigration status and national origin discrimination in employment. The Office of Special Counsel "works to ensure that employers do not discriminate against employment-authorized individuals based on their citizenship or immigration status or based on their national origin in violation of the anti-discrimination provision of the Immigration and Nationality Act (INA)." <http://tinyurl.com/lkl9br5>

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■ **Special Immigrant Visas for Afghan**

Nationals. On June 16, 2014, the Department of State (DOS) announced that its authority to issue Special Immigrant Visas (SIVs) to Afghan nationals under Section 602(b) of the Afghan Allies Protection Act of 2009, is limited to 3,000 visas in Fiscal Year 2014. The agency expects to exhaust those visas by July 2014 and encourages Congress to extend the program to allow continued issuance of SIVs to Afghan nationals. Eligibility is premised on having worked for the United States in Afghanistan with more than 70 percent serving as translators and the majority working with our nation's military forces. <http://tinyurl.com/lbm2m4x>

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■ **Benefits for Married Same-Sex Couples; *United States v. Windsor*.** On June 20, 2014, Attorney General Eric Holder submitted his memorandum to President Obama describing federal agency provision of benefits to married same-sex couples by *United States v. Windsor*, 570 U.S. ___ (2013). Included among those agencies was the U.S. Citizenship and Immigration Services, which now treats same-sex marriages exactly as opposite-sex marriages, provided the marriage is valid under the laws where it took place. <http://tinyurl.com/lkl9br5>

JUDICIAL LAW

■ **Family Petitions, Aging Out, and Child Citizenship Protection Act.** In a 5-4 decision, United States Supreme Court recently affirmed the Board of Immigration Appeals' narrow holding that the Child Status Protection Act does not provide protection to certain beneficiaries who age out by reaching the age of 21 while they await immigrant visa processing with their families, comprising a principal and derivative beneficiaries, often after the passage of several years. This set of individuals must have a new family petition filed for them by the principal beneficiary with the priority date (establishing one's place on the immigrant visa waiting list) established by that newly filed family petition, which ensures further delay in family unification. The Court held that the original priority date for the initially filed family petition cannot be given to the newly filed family petition since the original petitioning relative (sponsor) does not have the requisite relationship with the aged-out individual. "(A)liens [sic] like respondents' children—the nieces, nephews, and grandchildren of the initial sponsors—cannot qualify for "automatic conversion"; they lacked a

qualifying preference relationship with the initial petitioner, and so cannot fit into a new preference category without obtaining a new sponsor." In short, those aged-out derivative beneficiaries may not acquire the principal beneficiary's priority date but must instead acquire their own through a family petition by that principal beneficiary. *Scialabba v. Cuellar de Osorio*, 573 U.S. ___ (06/09/2014). *Slip op.* at http://www.supremecourt.gov/opinions/13pdf/12-930_4g18.pdf

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■ **Political Asylum: Right to Counsel; Prejudice; FGM.** In a recent decision involving political asylum and a fear of female genital mutilation (FGM), the 8th Circuit Court of Appeals found the petitioner failed to prove prejudice when her hearing was conducted without her counsel being present. Neither she nor her counsel offered evidence affirmatively proving that she was entitled to relief. "Assuming, without deciding, that the IJ violated Njoroge's statutory right to counsel by not at least calling Njoroge's counsel to see that Njoroge's statutory right to counsel was honored, Njoroge cannot prove prejudice." *Njoroge v. Holder*, No. 12-2158, *slip op.* (8th Cir. 06/03/2014). <http://media.ca8.uscourts.gov/opndir/14/06/122158P.pdf>

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■ **Permanent Residence: Adjustment of Status; "Unreasonable" Delay; TRIG.** The 8th Circuit Court of Appeals found U.S. Citizenship and Immigration Service's almost five-year delay in adjudicating the petitioner's application for permanent residence reasonable given that, prior to the Terrorism-related Inadmissibility Grounds (TRIG) exemption policy which had kept his application on hold, he was inadmissible for his past material support of a terrorist organization (National Islamic Front of Afghanistan, one of several groups known collectively as the Mujahidin) that opposed Soviet-backed forces following that country's invasion of Afghanistan in 1979. "Assuming for the sake of analysis that federal courts have authority to order the government to adjudicate adjustment-of-status applications within a certain period of time, Irshad has not shown that the delay in his case was unreasonable." *Irshad v. Holder*, No. 12-3870, *slip op.* (8th Cir. 06/11/2014). <http://media.ca8.uscourts.gov/opndir/14/06/123870P.pdf>

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