

outstanding discovery requests. **Mackey v. Jutila**, 2014 WL 521025 (D. Minn. 02/10/2014).



■ **Rule 11 Sanctions: Serial Pro Se Litigant.** Adopting the bulk of a report and recommendation by Magistrate Judge Rau, Judge Nelson denied the defendants' request that a serial *pro se* litigant be enjoined from filing additional actions in the Minnesota federal court, but did impose \$5,000 in Rule 11 sanctions against the plaintiff for pursuing claims that were not "objectively reasonable." **Rickmeyer v. Browne**, ___ F. Supp. 2d ___ (D. Minn. 02/05/2014).



■ **Personal Jurisdiction.** Judge Montgomery granted a motion to dismiss for lack of personal jurisdiction, rejecting the plaintiff's attempt to establish jurisdiction over a foreign entity under the alter ego doctrine, or under Fed. R. Civ. P. 4(k)(2). **M-1 Drilling Fluids UK LTD, v. Dynamic Air Inc.**, 2014 WL 494680 (D. Minn. 02/06/2014).

Judge Frank denied a motion to dismiss for lack of personal jurisdiction filed by a California attorney and his law firm, finding that the defendants were subject to specific personal jurisdiction in Minnesota where the claims asserted arose out of their filing of 53 cases in the District of Minnesota. **Janet, Jenner & Suggs, LLC v. Khorrami**, 2014 WL 348575 (D. Minn. 01/31/2014).

Judge Kyle denied the defendant trucking company's motion to dismiss for lack of personal jurisdiction, finding that its designation of an agent for service of process in Minnesota established its consent to personal jurisdiction. **Byrd v. J Rayl Transport, Inc.**, 2014 WL 321218 (D. Minn. 01/29/2014).



■ **Venue Transfer.** Judge Kyle granted the defendant's motion to transfer an action brought by Minnesota residents to the District of New Jersey, relying on the "most important" convenience of nonparty witnesses factor, finding that each of the "critical" nonparty witnesses resided in New Jersey and was outside the subpoena power of the Minnesota court, and that this factor was not outweighed by the presence of plaintiffs' expert witness in Minnesota. **Klatte v. Buckman, Buckman & Reid, Inc.**, ___ F. Supp. 2d ___ (D. Minn. 02/03/2014).

Judge Schiltz denied the defendant's motion to transfer which was premised on a forum selection clause in a prior

written contract between the parties, where the plaintiff's complaint did not assert any claims arising out of that contract, and the defendant did not contend that the written contract remained in force following its expiration. **D. Landstron Assocs., Inc. v. Mirama Enters., Inc.**, 2014 WL 359344 (D. Minn. 02/03/2014).

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IMMIGRATION LAW

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■ **Claim of Past Persecution: Evidence.** In a recent decision, the 8th Circuit Court of Appeals found the Board of Immigration Appeals (BIA) committed error by adopting the immigration judge's adverse credibility finding that the petitioner's claim of past persecution (*i.e.*, forced abortion in China) was not supported by substantial evidence. The immigration judge "ignored relevant evidence and engaged in impermissible speculation." The case was remanded for further proceedings. **Zhang v. Holder**, No. 12-3164, *slip op.* (8th Cir. 12/11/2013). <https://tinyurl.com/p2zqheg>

ADMINISTRATIVE ACTION

■ **H-2 Visas for 2014.** On January 17, 2014, the Department of Homeland Security (DHS), in concurrence with the Department of State, identified 63 source countries for temporary workers under the H-2A and H-2B programs for the coming year. Countries in Europe, Asia, Latin America, the Caribbean, and Africa are included.

The H-2A temporary agricultural worker program provides employers facing a shortage of domestic workers the opportunity to seek foreign agricultural workers for employment that is temporary or seasonal in nature. An employer must provide evidence that "there are not sufficient workers who are able, willing, qualified, and available, and that the employment of [foreign agricultural workers] will not adversely affect the wages and working conditions of similarly employed U.S. workers" before bringing any to the United States on the H-2A visa.

The H-2B temporary nonagricultural worker program provides employers facing a shortage of domestic workers opportunity to seek foreign nonagricultural workers for employment for a "one-time occurrence" or to meet a "seasonal," "peak load," or "intermittent" need. As with the H-2A program, the employer must provide evidence

that "qualified workers are not available in the U.S. and that the foreign worker's employment will not adversely affect wages and working conditions of similarly employed U.S. workers." There is a 66,000 cap for the H-2B visa.

Countries approved for the H-2 visas are listed annually in the *Federal Register* and the designation must be renewed every year. 79 *Fed. Reg.* 3214-15 (01/17/2014). <https://tinyurl.com/oh4khl5>



■ **Children Born Abroad through ART.**

In January, the Department of State issued notice of a policy change with respect to children born abroad through Assisted Reproductive Technology (ART). Previously, a mother was required to have a genetic connection to the child in order to impart immigration benefits as a legal parent. The agency's new policy will also include birth (gestational) mothers as legal parents for immigration purposes. The policy change is retroactive. State Dept. Doc. No. 00010952 (01/14/2014). <https://tinyurl.com/ongetty>

The Department of State has issued additional information for U.S. citizens considering the use of ART abroad. The agency noted that transmission of U.S. citizenship to children born abroad is governed by Sections 301 and/or 309 of the Immigration and Nationality Act (INA). (8 USC §§1401 and/or 1409). In those cases involving children conceived through ART, "a U.S. citizen father must be the genetic parent and a U.S. citizen mother must be either the genetic or the gestational and legal mother of the child at the time and place of the child's birth." Without that connection, the child will not automatically become a U.S. citizen at birth. <https://tinyurl.com/komjbmm>



■ **Naturalization: New Application.** On February 4, 2014, the U.S. Citizenship and Immigration Services (USCIS) released its new version of the Application for Naturalization (N-400) that initiates the process for individuals becoming U.S. citizens. The agency stated the change was necessary to more effectively determine an applicant's eligibility for citizenship through more extensive review of one's good moral character and issues concerning security of the country. These questions were generated in conformance with the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004 and Child Soldier Prevention Act of 2008. Additional considerations in generating

Notes&Trends

the new application involved clearer and more comprehensive instructions to improve understanding of the process as well as use of 2D barcode technology to implement more efficient scanning of data into the agency's systems. <https://tinyurl.com/lc9govr>

LOOKING AHEAD

■ **Visa Fraud: Falsification of Visa Petitions.** On January 31, 2014, a grand jury in Greensboro, North Carolina handed down a 41-count indictment against the International Labor Management Corporation, alleging fraud that included falsification of petitions to obtain extra H-2Bs (to avoid the visa cap) and petitioning for H-2A agricultural visas with the intent of using those workers in nonagricultural work. *U.S. v. International Labor Management Corp.*, No. 1:14CR00039UA (M.D.N.C. grand jury indictment 01/31/2014). <https://tinyurl.com/nuwe4lg>

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JUVENILE LAW

JUDICIAL LAW

■ **Termination of Parental Rights: Residency; Jurisdiction under UCCJEA.** In an unpublished decision, the Minnesota Court of Appeals reviewed a mother's challenge to the termination of her parental rights. While she alleged the termination based on her being a palpably unfit parent was not supported by the record and that the termination was not in the children's best interest, her primary legal contention was that the Minnesota district court lacked jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). The mother had six children and had significant involvement with child protection services in three Minnesota counties going back to 2004. Among the concerns raised in the various counties were lack of appropriate supervision, inadequate food, lack of necessary medical attention, threats of sexual injury, and educational neglect. At various times, the children were placed in relative foster care.

The mother moved to Illinois with the four youngest children in February of 2012. She and the four youngest children then returned to Minnesota three or four months later. Thereafter, Carver County Social Services again received reports of the mother engaging in inappropriate parenting of the children and causing safety concerns. Carver County filed a petition to terminate the mother's

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