■ **CAFA; remand affirmed; application of "viewpoint" rules.** Finding that the defendant could not meet its burden to establish the required amount in controversy under either the "plaintiffs' viewpoint" rule or the "either viewpoint" rule, the 8th Circuit declined to resolve which of these two rules applies in determining the amount in controversy under CAFA, and affirmed the remand of the action. ***Waters v. Ferrara Candy Co.***, 873 F.3d 633 (8th Cir. 2017).

■ **Multiple motions to amend denied.** The 8th Circuit affirmed denial of an untimely motion for leave to amend a complaint, finding that there was no need to address "complex" issues relating to the alleged futility of the proposed amendments after finding that the plaintiff had not been diligent and therefore could not establish the required good cause. ***Kmak v. Am. Century Cos.***, 873 F.3d 1030 (8th Cir. 2017).

Judge Magnuson rejected the plaintiff's request to amend her complaint included in her opposition to the defendant's motion to dismiss, where the plaintiff did not identify what additional facts she could allege, and where the plaintiff had failed to submit the proposed amended complaint and redline required by Local Rule 15.1(b). ***Kunza v. Clarity Servs., Inc.***, 2017 WL 4685060 (D. Minn. 10/16/2017).

■ **Motion to dismiss for lack of personal jurisdiction denied; registered agent.** Following existing 8th Circuit law and denying the defendant's motion to dismiss for lack of personal jurisdiction where the defendant had registered with the Minnesota Secretary of State and had appointed an agent for service, Judge Frank rejected the defendant's argument that the Supreme Court's *BNSF* decision (*BNSF Rwy Co. v. Tyrell*, 137 S. Ct. 1549 (2017)) had overruled 8th Circuit's precedent (*Knowlton v. Allied Van Lines, Inc.*, 900 F.2d 1196 (8th Cir. 1990)). ***Ritchie Capital Mgmt., Ltd. v. Costco Wholesale Corp.***, 2017 WL 4990520 (D. Minn. 10/30/2017).

■ **"Informal request" for leave to file untimely motion for attorney's fees denied.** Where the prevailing plaintiff's counsel waited almost a year after the entry of judgment before making an "informal request" for an extension of time to file a motion for attorney's fees, Judge Frank found that the informal request did not comply with Fed. R. Civ. P. 6(b)(1)(B), and that counsel's admitted "inadvertence, mistake and carelessness" did not constitute "excusable neglect." ***Sapp v. City of Brooklyn Park***, 2017 WL 5157447 (D. Minn. 11/6/2017).

■ **Expedited motion to stay remand pending appeal denied.** Judge Nelson denied the defendant's expedited motion to stay remand pending appeal, finding that the defendant had not made the required "strong showing" of a likelihood of success on the merits, or that he would be irreparably harmed absent a stay. ***Medtronic Sofamor Danek, Inc. v. Gannon***, 2017 WL 5135556 (D. Minn. 11/3/2017).

■ **Attorney's fees on discovery motion denied.** Relying on Fed. R. Civ. P. 37(a)(5)(A)(iii), Judge Nelson declined to award the plaintiff attorney's fees related to a motion to compel, finding that the parties had "engaged in good faith efforts" to resolve the dispute, and that "no bad faith was alleged." ***Amador v. U.S. Bank N.A.***, 2017 WL 5151680 (11/6/2017).

■ **Motion to reconsider granted.** Acknowledging the "unique posture" of the motion, Judge Nelson granted the plaintiff's motion for reconsideration of Judge Kyle's previous denial of his motion for summary judgment brought pursuant to Local Rule 7.1(j) after the case was reassigned to Judge Nelson. ***Johnston v. BNSF Railway Co.***, 2017 WL 4685012 (D. Minn. 10/16/2017).

■ **First-filed rule; declaratory judgment; second-filed action transferred.** Adopting a report and recommendation by Magistrate Judge Brisbois, Chief Judge Tunheim transferred a second-filed action to the District of Nevada, where the first-filed action was pending. Magistrate Brisbois' report and recommendation acknowledged that the Nevada action was primarily a declaratory judgment action that may have resulted from a "race to the courthouse," but found that the "anticipatory nature" of that action was "only a factor to be considered," and was "*not* dispositive." ***Cirrus Design Corp. v. Cirrus Aviation Servs., LLC***, 2017 WL 4863054 (D. Minn. 10/5/2017), *Report and Recommendation adopted*, 2017 WL 4863199 (D. Minn. 10/26/2017).

■ **Attorney's fees; nominal damages.** Where a jury awarded the plaintiff only $1 in damages on one claim against one defendant, Chief Judge Tunheim found that the plaintiff's victory was not "merely technical," and awarded her more than $305,000 in attorney's fees and almost $19,000 in costs. ***Jenkins v. Univ. of Minnesota***, 2017 WL 4657853 (D. Minn. 10/13/2017).

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IMMIGRATION LAW

JUDICIAL LAW

■ **Where's the love?** The 8th Circuit Court of Appeals held that the Board of Immigration Appeals' determination that the petitioner's attempt to procure permanent residence by willfully misrepresenting his marriage to a U.S. citizen as *bona fide* was supported by substantial evidence that it was in fact a sham. "We conclude that the testimony and documentary evidence submitted by DHS—and not refuted by credible evidence that Abuya and Maldonado ever lived together—was substantial evidence that supported the IJ's [immigration judge's] finding that the marriage of Abuya and Maldonado was fraudulent under §1182(a)(6)(C)(i) and therefore Abuya is removable under §1227(a)(1)(A)." ***Abuya v. Sessions***, No. 16-3407, *slip op.* (8th Cir. 10/17/2017). *http://media.ca8.uscourts.gov/opndir/17/10/163407P.pdf*

ADMINISTRATIVE ACTION

■ **DOJ and DOS partner to combat fraud and protect U.S. workers from discrimination.** On 10/11/2017, the Departments of Justice and State announced that they had signed a Memorandum of Understanding whereby the Civil Rights Division and Bureau of Consular Affairs will share information about employers that may be engaged in unlawful discrimination, committing fraud, or making other misrepresentations in their use of employment-based visas, such as H-1B, H-2A, and H-2B visas. Acting Assistant Attorney General John M. Gore of DOJ's Civil Rights Division declared "today's agreement reflects the Civil Rights Division's commitment to use all available tools, including collaboration with other federal agencies, to protect U.S. workers from discrimination. The Division welcomes the Department of State as a partner in this effort." *https://www.justice.gov/opa/pr/departments-justice-and-state-partner-protect-us-workers-discrimination-and-combat-fraud*

■ **BALCA overturns denial of labor cert given different guidelines for ad placement in local/ethnic newspapers.** On 10/3/2017, the Board of Alien

Labor Certification Appeals (BALCA) overturned a labor certification denial, finding the regulations controlling placement of an ad in a general circulation Sunday newspaper differ from those for an ad in a local/ethnic newspaper. The employer was not required to place an ad in a local/ethnic newspaper "most likely to bring responses" as called for with ads in a general circulation Sunday newspaper. To do otherwise would impose new requirements on ads in local/ethnic newspapers. "The Employer has established that the *Navajo Times* is an appropriate paper for the job opportunity. The teaching position will entail working primarily with Navajo Indian children and the *Navajo Times* focuses its coverage on the Navajo Indian community. It is reasonable to conclude that an advertisement in the *Navajo Times* is an appropriate method to recruit for teachers at a school with many Navajo Indian students." ***Matter of Gallup McKinley County Schools***, 2013-PER-03215 (10/3/2017). *https://www.oalj.dol.gov/decisions/alj/per/2013/in_re_gallup_mckinley_coun_2013per03215_(oct_03_2017)_094808_cadec_pd.pdf*

■ **TPS extended for South Sudan.** On 9/21/2017, the Department of Homeland Security extended temporary protected status (TPS) for South Sudanese holders of that status from 11/3/2017 through 5/2/2019. According to Acting DHS Secretary Elaine Duke, such action is "warranted because the ongoing armed conflict and extraordinary and temporary conditions that prompted the 2016 TPS redesignation have persisted, and in some cases deteriorated, and would pose a serious threat to the personal safety of South Sudanese nationals if they were required to return to their country." 82 *Fed. Reg.* 44205-11 (9/21/2017). *https://www.gpo.gov/fdsys/pkg/FR-2017-09-21/html/2017-20174.htm*

■ **Foreign terrorist designations for Jaish-e-Mohammed and Islamic Jihad Union.** On 10/11/2017, Secretary of State Rex Tillerson announced that the designations of Jaish-e-Mohammed and Islamic Jihad Union as foreign terrorist organizations would continue to be maintained pursuant to Section 219 of the Immigration and Nationality Act (8 U.S.C. §1189). 82 *Fed. Reg.* 50728 (11/01/2017). *https://www.gpo.gov/fdsys/pkg/FR-2017-11-01/pdf/2017-23796.pdf*

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H-1 Work Visa Quota Alert

Advice for Corporate Clients: Plan Now for 2018 H-1 Work Visas for Key International Personnel

Employers should start NOW to prepare petitions for the limited supply of new H-1s subject to the 2018 quota. April 1, 2018 is the earliest possible new filing opportunity.

If the 2018 quota is missed, employers may be unable to obtain new H-1 work authorizations until October 2019.

Scott Borene
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Named *2018 Lawyer of the Year* in Immigration Law in Minnesota by *Best Lawyers in America*

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