

2013 AILA Paralegals Conference & Webcast

October 24–25, 2013
AILA National Office
Washington, DC



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The Role of a Paralegal in Immigration Practice

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YOUR LEGAL ROLE IN THE IMMIGRATION SYSTEM

Definition of a Paralegal:

- *Paralegal: "A legal assistant or paralegal is a person, qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity who performs specifically delegated substantive legal work for which a lawyer is responsible"*
— American Bar Association Definition
- *paralegal, jr. A person who assists a lawyer in duties related to the practice of law but who is not a licensed attorney*
— Black's Law Dictionary



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PROFESSIONAL RESPONSIBILITY AND ETHICAL CONDUCT

- Understand the ethical and legal responsibilities arising from an attorney client relationship
- Ethical duties imposed on attorneys by state law affect paralegals
- Paralegals are indirectly regulated by attorney ethical codes and by state laws that prohibit non-lawyers from practicing law



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PROFESSIONAL RESPONSIBILITY AND ETHICAL CONDUCT

Spotting Issues

- Protecting the attorney and the clients
- New facts / change of facts after conversation with client
- Diagnosing the issue/problem
- Second-guessing
- When and how to approach the attorney



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PROFESSIONAL RESPONSIBILITY AND ETHICAL CONDUCT

Client Confidentiality

- What information is confidential?
- Secure office practices
 - Telephone inquiries
 - Overheard conversations
 - Document Security



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COMMUNICATION

Client Communication

- Identifying your role to the client
 - Informing the client of your job title and your responsibilities to their case.
 - Understanding the difference between giving advice and informing the client
- Understanding the importance of non-verbal cues
- Establishing friendships
 - "Friending" or "following" clients on social media
 - Communicating with clients outside the office
 - Accepting gifts and/or requests for lunch



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COMMUNICATION

Communicating with the attorney/supervisor

- Don't be afraid to ask
- Encourage open communication
- Set expectations
- Make sure you have the tools
- Ask for feedback
- Know when to say "No"

Communicating with other staff members

- Maintain a healthy relationship with coworkers
- Offer and ask for help when warranted
- Refrain from office gossip



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WORK PRODUCT/ CLIENT MANAGEMENT

Files and Recordkeeping

- Maintain Clean and Accurate Files
 - Document all client communications, including e-mails, texts, or other forms of messages
 - Do not store incomplete documents or drafts.
 - Remember all files are the client's property
- Documenting Client Communications
 - Track every client interaction. This includes date, time, and nature of the interaction with the client or client matter. This is important for:
 - ✓ Billing purposes
 - ✓ Providing a timeline for case development
 - ✓ Safety net for when a client complains



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WORK PRODUCT/ CLIENT MANAGEMENT

Client Interview Techniques

- When to Ask Tough Questions
- Reporting Evasive Answers
- Willful Blindness



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WORK PRODUCT/ CLIENT MANAGEMENT

Organizing and maintaining electronic case files

- Practice management programs
- Saving documents in Microsoft Office
- Sharing files via Dropbox, Google Docs, and other cloud programs
- Scanning all documents

Calendaring important dates and deadlines

- Include reminders and assign tasks
- Don't always count on technology to store dates and deadlines
- Include a list of all dates and timelines in client's folder



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PROFESSIONAL DEVELOPMENT

- Enhance Skills
 - Research and writing
 - Client interaction
- Develop a Niche Expertise
 - H1-B Specialty Occupations
 - Religious Workers
- Advance Your Career
 - Continuing education
 - Join the board of your local paralegal association
- Find an Avocation
 - Playing piano
 - Train for a marathon



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**TOOLS OF THE TRADE/
AILA RESOURCES**



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Questions & Answers



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Legal Concepts Involved In Preparing an H-1B Petition

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Specialty Occupation

- Definition
 - 8 CFR §214.2(h)(4)(ii)
- Qualifications
 - 8 CFR §214.2(h)(4)(iii)(A)



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Beneficiary Qualifications 8 CFR §214.2(h)(4)(iii)(B)(3)

- Degree only
- Degree + Experience
- Experience only



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Validity Period

- How much time to request?
 - How much time is left of their 6 years?
- Recapture
- Post-6th Year Extensions



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LCA Issues

- Public Access File
- Posting Notices
- When to File a New LCA



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H-1B CAP

- How Does It Work?
- Timing Issues
- Who Is Cap-Exempt?



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Employer/Employee Relationship

- Traditional employee
- Third party placements



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Professions Requiring License

- Specific professions
- How to document
- Length of license vs. petition validity period



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**Key Legal Concepts & Hot Topics in
the PERM Process**


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Building Your Case

- Most important part of EB Green Card Process
- Everything else flows from work done at this stage
- Don't be surprised at later stages by something not anticipated here



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Position Titles; Job Description

- Start with Employer Title and Description
- Consider likely OES category and prevailing wage
- Employer should approve Job Description (JD)
- Avoid “preferred” language; focus on minimum requirements for that job



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Job Descriptions (cont.)

- Avoid too generic
- Avoid “tailoring”
- Different than HR; consider this job and what is needed to perform it
- Consider the Foreign National’s (FN’s) qualifications when hired or promoted



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Job Description (cont.)

- Duties/Requirements
- Specific Skills – not tailored, but not too generic either
- Employer must approve and FN must be able to document



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Business Necessity

- If requirements exceed OES SVP, be prepared to document the need
- SVP Calculations/Job Zones
- Document through a letter from the employer



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Document Education

- Do early in case – don't be surprised at the end.
- "Professional" → need 4-year single source Bach. Degree – no experience equivalent
- "Advance Degree Prof." → Master's or Bachelor's plus five years progressive experience
- Foreign degrees need EDGE evaluation



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Document Work

- Experience letters on letterhead from previous employers
- Name, dates, duties
- "Delitizer" → Chart for work with same employer
- Other Evidence – pay stubs, letters from managers, evidence of company closing



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Pre-filing Recruitment

- Test the market for qualified, willing and able U.S. worker(s)
- Bona fide effort
- ~30 day active, 30 day quiet
- Start within PWD validity



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Posting Notices and In-House Media

- Similar to LCA posting notice
- 10 business days
- Alien labor certification language
- Salary range



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Mandatory Recruitment Steps

- State Workforce Agency — 30 calendar days
- Sunday print ads — two consecutive Sundays
- Three additional forms—timing?



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Additional Recruitment

- Employer's Website
- Other Job Search Website
- Employee Referral Program
- Local or Ethnic Newspaper



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Additional Recruitment

- Job fair
- On-campus Recruitment/Campus Placement Office
- Trade or Professional Organization
- Private Employment Firm
- Radio or TV Ads



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Documenting Recruitment Results

- Critical Ongoing Step!
- First and Last Day Active
- Entire Ad and Date
- Review as Placed



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Travel

- Multiple Worksites
- Roving Employees
- Working from Home



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Substantial Equivalence

- 20 CFR §656(h)(4)
- Requirements must represent employer's actual minimum requirements
- *Kellogg* Language
- Alternative requirements must be substantially equivalent
- See SVP guide to calculate equivalence



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SVP, Work Experience & Academic Degrees

- 1 Year of Work Experience = 1 SVP Year
- General Associate's Degree = 0 SVP Year
- Specific Associate's Degree = 2 SVP Years
- Baccalaureate Degree = 2 SVP Years
- Master's Degree = 4 SVP Years
- Doctorate Degree = 7 SVP Years

Bachelor's + 5 years = 7 SVP years

Master's + 3 years = 7 SVP years



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Rejection of U.S. Applicants

- Reasons for Disqualification?
- Contacting Applicants.
- What About Skills?
- Layoffs



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Questions & Answers



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The Nuts and Bolts of Adjustment of Status vs. Consular Processing


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Adjustment of Status vs. Consular Processing – Timelines and Considerations

- Initial Review
- Eligibility
 - Visa Availability
 - Admissibility
- Timing



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Documentation Requirements

- Birth Certificates
- Police Certificates
- Medical Examination
- Divorce/Marriage Certificates



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Differences in Family-Based vs. Employment-Based

- Timing (Premium Processing)
- Eligibility for Adjustment
- Affidavit of Support
- Priority Dates



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Adjustment of Status – Pros

- Everything submitted in the United States
- Employment authorization document
- No interview for some categories
- Concurrent filing
- No police certificates (unless criminal issue)



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Adjustment of Status – Cons

- Period of travel restrictions for most applicants
- Only available to those eligible



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Immigrant Visa – Pros

- More flexibility for international travel
- Changes to NVC processing
- Quicker for direct file cases



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Immigrant Visa – Cons

- National Visa Center
- Police certificates
- Medical examination separate from interview
- No work authorization while pending



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Recent Developments at the National Visa Center

- Blue or black ink?
- Uploading documents
- DS-230
- Dealing with multiple requests for unavailable/irrelevant documents



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Inadmissibility, Ineligibility, and Waiver Issues

Inadmissibility

- INA §212(a), 8 USC §1182(a)
- Cannot enter the United States or adjust status
- Health related grounds – mental/physical
- Public Charge
- Misrepresentation, Fraud, False Claim to Citizenship
- Polygamists, child abductors, unlawful voters



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Inadmissibility, Ineligibility, and Waiver Issues

Presence grounds of inadmissibility

- Present without Admission or Parole (VAWA exception)
- Unlawful Presence
- Removal
- Unlawful Presence/Removal with EWI
- Removal In Absentia (Reasonable Cause Exception)



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Inadmissibility, Ineligibility, and Waiver Issues

Criminal grounds of inadmissibility

- Crime Involving Moral Turpitude: conviction or admission (3 exceptions)
- Drug Offenses: conviction or admission
- Multiple Convictions: five-year aggregate sentences of confinement
- Prostitution within 10 years of application
- Terrorism, Espionage, Communists



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Inadmissibility, Ineligibility, and Waiver Issues

- INA §212(h) waives CIMT, simple possession, multiple convictions, prostitution
- Must show extreme hardship to qualifying relative/15 years rehab/VAWA
- INA §212(i) waives fraud misrepresentation—extreme hardship
- Waiver for health grounds (INA §212(g))
- EWI after Removal/Unlawful Presence (permission needed after 10 years)
- Unlawful Presence—extreme hardship & provisional waivers
- Removal—Form I-212



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Adjustment of Status vs. Consular Processing Practicum

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Adjustment of Status Forms

- I-485 Application to Register Permanent Residence or Adjust Status
- G-325 Biographic Information
- I-131 Application for Travel Document
- I-765 Application for Employment Authorization
- I-864 Affidavit of Support
- G-28 Notice of Entry of Appearance as Attorney or Accredited Representative



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Adjustment of Status Forms

- G-1145 E Notification of Application/Petition Acceptance
- I-508 Waiver of Rights, Privileges, Exemptions and Immunities
- I-693 Report of Medical Examination and Vaccination Records



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Adjustment of Status Documents

- Birth Certificate
- Photos
- Medical Examination (I-693)
- Approval Notice
- Police Records
- Employment Letter
- Visa and Entry Documentation
- Translations
- See Form Instructions



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Immigrant Visa Forms

- DS-260 Online Immigrant Visa Application
- I-864
- Post Specific Forms



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Immigrant Visa Documents

- Passport
- Birth Certificate (Long Form)
- Police Certificates
- Photos
- Medical Examination
- Adoption/Name Change/Marriage/Divorce/Court and Prison Records
- Original Certificates
- Translations
- See Reciprocity Table



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National Visa Center

- Staying one step ahead
- Online payments and application processing
- Submitting documents and requesting interview date
- Who has the case – USCIS, NVC or post?



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Affidavit of Support Under Section 213A of the Act USCIS Form I-864 (06/16) (10-10-15) (Supp 01/10/15)

Department of Homeland Security
U.S. Citizenship and Immigration Services

Section 213A Review
 MEETS requirements
 DOES NOT MEET requirements

Number of Support Affiliants in File
 1
 2

Affidavit of Support Submitter
 For: Petitioner
 Joint Sponsor
 Individual Sponsor
 Substantive Sponsor
 Only: Sole Owner

Reviewed By: _____
 Title: _____
 Date: MM/DD/YYYY

Remarks: _____

START HERE - Type or print in black ink.

Part 1: Basis For Filing Affidavit of Support

1. **Relationship to Principal Immigrant**
 I am the spouse, common-law spouse, or partner of the principal immigrant.
 I am the petitioner, I filed an affidavit of support because (check only one box):
 1.a. I am the petitioner. I filed an affidavit of support because:
 1.b. I filed an alien worker petition on behalf of the principal immigrant, who is related to me as my:
 1.c. I have an ownership interest of at least 5 percent in which I filed an alien worker petition on behalf of the principal immigrant, who is related to me as my:
 1.d. I am the only joint sponsor.
 1.e. I am the first second of two joint sponsors.
 1.f. The original petitioner is deceased. I am the petitioner sponsor. I am the intending immigrant.

Part 2: Information on the Principal Immigrant

1.a. Family Name (Last Name) _____
 1.b. Given Name (First Name) _____
 1.c. Middle Name _____

2.a. Name and Number _____
 2.b. Age Sex
 2.c. City or Town _____
 2.d. State _____ Zip Code _____
 2.e. Postal Code _____
 2.f. Province _____ Country (foreign) _____

3. Country of citizenship _____
 4. Date of Birth (mm/dd/yyyy)
 5. Alien Registration Number (A-Number)

NOTE: If you check box 1.b., 1.c., 1.d., or 1.f., you must include proof of your income, networth, or level of permanent resident status.

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Part 3: Information on the Immigrant(s) You Are Sponsoring

1. I am sponsoring the principal immigrant named in Part 2.
 Yes No (Applicable only in cases with two joint sponsors)

2. I am sponsoring the following family members immigrating at the same time or within 6 months of the principal immigrant named in Part 2. Do not include any relative listed on a separate visa petition.

Family Member 1

2.a. Family Name (Last Name)
 2.b. Given Name (First Name)
 2.c. Middle Name _____
 2.d. Relationship to Sponsored Immigrant
 2.e. Date of Birth (mm/dd/yyyy)
 2.f. Alien Registration Number (A-Number)

Family Member 2

2.a. Family Name (Last Name) _____
 2.b. Given Name (First Name) _____
 2.c. Middle Name _____
 2.d. Relationship to Sponsored Immigrant _____
 2.e. Date of Birth (mm/dd/yyyy)
 2.f. Alien Registration Number (A-Number)

Family Member 3

2.a. Family Name (Last Name) _____
 2.b. Given Name (First Name) _____
 2.c. Middle Name _____
 2.d. Relationship to Sponsored Immigrant _____
 2.e. Date of Birth (mm/dd/yyyy)
 2.f. Alien Registration Number (A-Number)

Family Member 4

2.a. Family Name (Last Name) _____
 2.b. Given Name (First Name) _____
 2.c. Middle Name _____
 2.d. Relationship to Sponsored Immigrant _____
 2.e. Date of Birth (mm/dd/yyyy)
 2.f. Alien Registration Number (A-Number)

Family Member 5

2.a. Family Name (Last Name) _____
 2.b. Given Name (First Name) _____
 2.c. Middle Name _____

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Marketing & Social Media

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Is Traditional Marketing Dead or Still Useful?

- Evaluate your *current* clients and your *desired* clients
 - Are the clients internet savvy?
 - What is the age group of the clients?
 - How do you communicate with the clients?
 - Where do new clients find information about your firm?



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Is Traditional Marketing Dead or Still Useful?

- If your current/desired clients are older and not very computer literate, traditional marketing is probably still the best way to reach them.
- If your clients are younger (such as DACA recipients) or computer literate (common for H-1Bs and PERMs), social media and online marketing is often a better way to reach them.



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Hot New Social Media Trends and Statistics

- YouTube
 - 1,700 YouTube video links are shared on Twitter every minute
- Facebook
 - 70% of business-to-consumer marketers have acquired a customer through Facebook
- LinkedIn
 - 43% of U.S. marketers have found a customer through LinkedIn
- Twitter
 - 16.69% of online business-to-consumer marketers use Twitter, compared to 80% for business-to-business
- Google+
 - 17.70% of brands have presences on Google+, up 4% from Q4 2012



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Hot New Social Media Trends and Statistics



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Facebook — Various Ways to Use Facebook in a Law Office

- Current immigration news
- Asking questions to other immigration professionals you are connected to or in FB groups
- Information on clients & potential clients
- Providing information to clients



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Twitter – Bleeding Edge Immigration News

Randall Caudle @randallcaudle
San Francisco Immigration Attorney at Caudle Immigration. Interests include social media, coffee, travel, baseball, ESPN sports center, & spy books & TV shows. San Francisco, CA caudleimmigration.com

1070 TWEETS 1280 FOLLOWING 741 FOLLOWERS

Tweets [2 Oct](#) Its time for the green card lottery <http://bit.ly/1GwHjHS>. Information on the 2015 green card lottery.



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Twitter Tips

- Can Retweet Immigration Articles Easily
- Can Live Tweet Immigration Events or Announcements (*i.e.*, DACA & I-601As)
- Can Search Twitter for Info on an Immigration Topic
- App for Phone – Tweet on the Go!



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The Conversation on Twitter

- DREAMers and Immigration Reformers have been hailed for their organization
- Have used Twitter as a key tool for organization
- Journalists now follow activists
- Used to apply political pressure (ex: Thunderclap)



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Other Social Media Sites

- LinkedIn – Essential for Law Firms
- Quora – Questions & Answers
- Klout – Personal Social Media Statistics
- Pinterest – Personalize Your Law Firm & Attorneys
- Tumblr – Niche Immigration Topics



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New Sources of News



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Newsle



- Newsle finds articles about you, your friends and colleagues, and anyone else you care about and notifies you minutes or hours after they're published.
- Newsle's core technology is its disambiguation algorithm, which determines whether an article mentioning "John Smith" is about the right person.
- Why would you use this?



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Google+

- A top-quality video chat platform that costs nothing. Hangout allows you to hold video chat sessions with an unlimited number of people right from your Google+ account
- Circles are in fact an incredibly easy and convenient means of content sharing
- Google+ – on paper anyway – is the world’s second largest social network after Facebook
- Why would you use this?



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Latino Rebels

- The Latino Rebels are a collective of social media influencers, bloggers, journalists, poets, writers, producers, photographers, and marketers
- They use humor, commentary, opinions, independent stories, cross-links to others blogs, and social media platforms to share their universe
- Why would you use this?



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Social Media Ethics

- AILA Articles
- Privacy Issues & Confidentiality
- Friending Your Clients?
- Legal Advice Online?



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Interesting Internet Immigration Items

- What the Immigration Attorney – <http://immigrationattty.tumblr.com/page/1>
- Consular Corner on FB – <https://www.facebook.com/ConsularCorner>
- Caudle Immigration on FB
- International Immigration Professionals – LinkedIn



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