

## Notes&Trends

removing defendant should be realigned as a plaintiff. *Alliance Energy Servs., LLC v. Kinder Morgan Cochin LLC*, \_\_\_ F. Supp. 3d \_\_\_ (D. Minn. 2015).



■ **Multiple sanctions motions denied.** Chief Judge Davis denied one defendant's motion for Rule 11 sanctions following a successful motion to dismiss, finding that there was "no controlling authority on point" on one claim, and that other claims "were not so unreasonable as to merit sanctions." *Greene v. Dayton*, \_\_\_ F. Supp. 3d \_\_\_ (D. Minn. 2015).

Adopting a Report and Recommendation by Magistrate Judge Keyes finding that the plaintiff's arguments were not "wholly frivolous" and that his allegations were "not entirely without factual support," Chief Judge Davis denied defendants' joint motion for Rule 11 sanctions after granting their motion to dismiss. *Duckson v. Continental Cas. Co.*, 2015 WL 75262 (D. Minn. 1/6/2015).



■ **Location of Fed. R. Civ. P. 30(b) (6) depositions; magistrate judge's order not clearly erroneous.** Judge Tunheim overruled objections to Order by Magistrate Judge Graham that had directed that the depositions of the defendant's Fed. R. Civ. P. 30(b) (6) designees be conducted at the defendant's corporate headquarters in Cincinnati, citing the "general rule" that the corporation's principal place of business is the appropriate location for corporate deposition, and rejecting the plaintiff's argument that the defendant's alleged inability to produce its Rule 30(b)(6) witnesses on consecutive days may have rendered Magistrate Judge Graham's Order clearly erroneous. *Webb v. Ethicon Endo-Surgery, Inc.*, 2015 WL 317215 (D. Minn. 1/26/2015).

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## IMMIGRATION LAW

### JUDICIAL LAW

■ **Lack of credibility in asylum application.** The 8<sup>th</sup> Circuit Court of Appeals found that the petitioner's inconsistent testimony and lack of corroborating evidence provided sufficient support for the Immigration Judge's adverse credibility determination. *Ali v. Holder*, No. 13-1832, slip op. (8<sup>th</sup> Cir. 1/8/2015). <http://media.ca8.uscourts.gov/opndir/15/01/131832P.pdf>

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■ **I-9 may serve as evidence of false claim of U.S. citizenship.** The 8<sup>th</sup> Circuit Court of Appeals found an I-9 form may be used as evidence of a false claim of U.S. citizenship in a removal proceeding. According to the court, the record supported the Board of Immigration Appeals' finding that the petitioner failed to prove that he had not made a false claim of U.S. citizenship. *Mayemba v. Holder*, No. 13-1558, slip op. (8<sup>th</sup> Cir. 1/13/2015). <http://media.ca8.uscourts.gov/opndir/15/01/131558P.pdf>



■ **No misapplication of legal standard in cancellation context.** The 8<sup>th</sup> Circuit Court of Appeals found the Immigration Judge and Board of Immigration Appeals did not misapply the legal standard for finding an "exceptional and extremely unusual hardship" and appropriately denied the petitioner's application for cancellation of removal. Nor, according to the court, did the Immigration Judge and Board commit error when denying the petitioner's application for political asylum since he failed to establish eligibility given his lack of credibility. *Guerreiro Tejado v. Holder*, No. 13-3113, slip op. (8<sup>th</sup> Cir. 1/29/2015). <http://media.ca8.uscourts.gov/opndir/15/01/133113P.pdf>



■ **Not a member of a "particular social group."** The 8<sup>th</sup> Circuit Court of Appeals held the Board of Immigration Appeals did not commit error when it found the petitioner failed to prove membership in a "particular social group" within the asylum context. *Kanagu v. Holder*, No. 13-3563, slip op. (8<sup>th</sup> Cir. 2/9/2015). <http://media.ca8.uscourts.gov/opndir/15/02/133563P.pdf>

ADMINISTRATIVE ACTION

■ **USCIS provides more information about President Obama's executive actions on immigration.** On January 30, 2015, U.S. Citizenship and Immigration Services offered more information about President Obama's 11/20/2014 Executive Actions on Immigration. This information includes summaries of who is eligible, what the initiatives will do, and when and how a request may be made. More detailed information will become available over the coming months. See <http://www.uscis.gov/immigrationaction>



■ **Department of Justice's Office of Special Counsel offers general guidelines regarding employer discrimination.** On January 8, 2015, the Department of Justice's Office of Special Counsel

offered, through a Technical Assistance Letter, general guidelines for employers with concerns over claims of discrimination when an employee provides new authentic work authorization documents after initially providing ones that were not genuine. See <http://www.justice.gov/crt/about/osc/pdf/publications/TAletters/FY2015/183.pdf>



■ **Department of Homeland Security designates countries eligible for H-2A and H-2B programs.** The Secretary of Homeland Security, in consultation with the Secretary of State, has designated 68 countries for participation in the H-2A and H-2B nonimmigrant programs over the year. For the first time, nationals of the Czech Republic, Denmark, Madagascar, Portugal, and Sweden are eligible to participate. 79 Fed. Reg. 74735-36 (12/16/2014). See <http://www.gpo.gov/fdsys/pkg/FR-2014-12-16/pdf/2014-29353.pdf>



■ **In-country refugee/parole processing for minors in Honduras, El Salvador, and Guatemala (Central American Minors – CAM).** More detailed information about the program, eligibility requirements, and application process was recently released by U.S. Citizenship and Immigration Services. <http://www.uscis.gov/humanitarian/refugees-asylum/refugees/country-refugeeparole-processing-minors-honduras-el-salvador-and-guatemala-central-american-minors-cam>



■ **Temporary protected status extended for El Salvador.** The Department of Homeland Security recently announced extension of temporary protected status for El Salvador, to run from 3/10/2015 through 9/9/2016. 80 Fed. Reg. 893-99 (1/7/2015). <http://www.gpo.gov/fdsys/pkg/FR-2015-01-07/html/2015-00031.htm>



■ **Extension and redesignation of temporary protected status for Syria.** The Department of Homeland Security recently announced extension and redesignation of temporary protected status for Syria, to run from 4/1/2015 through 9/30/2016. 80 Fed. Reg. 245-52 (1/5/2015). <http://www.gpo.gov/fdsys/pkg/FR-2015-01-05/pdf/2014-30871.pdf>



■ **Foreign terrorist organizations.** Secretary of State John Kerry recently announced that both the Palestinian Islamic Jihad (and other aliases) as well

as the Popular Front for the Liberation of Palestine – General Command (and other aliases) will continue to remain designated as foreign terrorist organizations in accordance with Section 219 of the Immigration and Nationality Act (8 U.S.C. §1189). 79 Fed. Reg. 75227 (12/17/2014) and 80 Fed. Reg. 603 (1/6/2015). <http://www.gpo.gov/fdsys/pkg/FR-2014-12-17/pdf/2014-29599.pdf> <http://www.gpo.gov/fdsys/pkg/FR-2015-01-06/pdf/2014-30962.pdf>

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PROBATE & TRUST LAW

JUDICIAL LAW

■ **IRS agent's abuse of discretion results in second look at estate's payment alternatives.** Following months of negotiations between IRS and estate and replacement of the primary settlement officer, the successor officer proceeded with levy action against the estate. Tax Court determined estate was denied a fair hearing due to successor officer's failure to meaningfully consider any collection alternatives and because of incorrect and illogical factual and legal assumptions. Tax Court determined that successor officer's errors were not harmless and levy determination was an abuse of discretion. The case was remanded for reconsideration of estate's proposed collection alternatives. *Estate of Sanfilippo v. Comm'r*, T.C. Memo. 2015-15 (1/22/2015).

– ROBIN TUTT  
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REAL PROPERTY

JUDICIAL LAW

■ **Landlord-tenant; landlord may charge add-on fees relating to utilities and those fees need not be equitable under Minn. Stat. § 504B.215.** Two individuals were tenants in two separate apartment complexes managed by the same management company. Each apartment complex had just a single meter to measure utilities usage for the entire complex. The leases for the units in the complexes contained provisions which required the tenants to pay their share of the utilities. The leases also included a number of other fees that the tenants were required to pay, including an account activation fee, a monthly administrative fee, a late payment fee, and a convenience fee for credit card payment (collectively referred to as