

UNIVERSITY OF THE DISTRICT OF COLUMBIA

DAVID A. CLARKE SCHOOL OF LAW

FINAL EXAMINATION IN IMMIGRATION LAW

Professor Isgro - December 16, 2008

2:00-4:30 pm

INSTRUCTIONS:

- 1. This is an OPEN book examination.**
- 2. You will have 2 and ½ hours to complete this examination.**
- 3. There are 5 numbered questions. Answer all questions. This final exam accounts for 70% of our final grade.**
- 4. Write legibly.**
- 5. Where appropriate, include all relevant statutory, regulatory and case law citations.**

Good luck!

This exam consists of 6 numbered pages. Please be sure your exam is complete.

QUESTION 1 (25 points)

Dam Brom is a Jamaican national who came to the United States as a legal permanent resident in 1993 at the age of fifteen. Four years later, when he was nineteen, Brom “came out” as a gay man. Prior to coming out, Brom made two short trips to Jamaica to visit his extended family. He did not visit his home country again because he claimed violence against homosexuals in Jamaica.

On February 9, 2005, Brom was placed in removal proceedings after pleading guilty to misdemeanor sexual abuse in the third degree and contributing to the sexual delinquency of a minor. The government charged him as removable for having been convicted of an aggravated felony. Brom then applied for asylum, withholding of removal, and protection under the Convention Against Torture.

In support of his application, Brom testified that as a gay man he would be beaten and killed if returned to Jamaica. In support of this belief, Brom testified about articles that he had read about violence against gay men in Jamaica and expressed concern that his father might have told his extended family that he was gay. Brom also stated at the hearing that he does not have contact with anyone in Jamaica and that no one in Jamaica is aware that he is a homosexual. Brom also submitted documentary evidence in support of his claim, including the 2005 U.S. State Department Country Report for Jamaica (“Country Report”). According to the report, violence against homosexuals is perpetrated by both private individuals and public officials such as police officers and prison personnel. “There were numerous cases of violence against persons based on sexual orientation, including by police and vigilante groups,” stated the report. These included mob attacks, stabbings, and targeted shootings. The report also noted that Jamaican law criminalizes homosexual conduct, making it punishable by up to ten-years imprisonment, and that the prime minister had stated that the government would not be pressured into changing its anti-homosexual laws. This law, known as the Offenses Against the Person Act, prohibits “ ‘acts of gross indecency’ (generally interpreted as any kind of physical intimacy) between men, in public or in private.”

Assume you are the Immigration Judge who heard Brom’s testimony which you find credible. Write a decision ruling on Brom’s claim for asylum, withholding of removal, and protection under the Convention Against Torture. Where appropriate, make reference to statutory provisions and supporting case law. Please note that in the event you find that Brom is ineligible for some of the reliefs that he is seeking, you must nonetheless, make the alternative finding on the merits.

QUESTION 2 (10 points)

Joe Santoro, a citizen of Canada, was recently convicted of property under Illinois State law for theft of a recorded sound. Santoro had downloaded some illegal Mp3 copyrighted music files something done by 2 in 5 Americans, as reported by CNN earlier this year. The Illinois state statute provides that “[a] person commits theft when he knowingly: . . . [o]btains control over stolen property knowing the property to have been stolen or under such circumstances as would reasonably induce him to believe that the property was stolen” Santoro had an earlier conviction for purchase of stolen property. Subsequently, DHS placed him in removal proceedings on the basis that he had been convicted of two crimes involving moral turpitude. Santoro then applied for cancellation of removal. The Immigration Judge then denied cancellation of removal and ordered Santoro deported to Canada.

Is the Immigration judge correct in his finding that Santoro was deportable as charged and that he was not eligible for cancellation of removal. Explain your answer fully.

QUESTION 3 (15 points)

The following article was published a week ago in a British newspaper:

Briton jailed in US immigration crackdown for 'third of a joint'

A Briton who has lived and worked legally in America for 35 years, married a US citizen and raised three children there, has been locked up in a New Jersey jail after falling victim to a draconian immigration crackdown prompted by the Sept 11 2001 terror attacks.

By Philip Sherwell in New York

Last Updated: 10:26AM GMT 07 Dec 2008

Paul Clements now spends his days in a khaki prison jumpsuit

Paul Clements, 58, a permanent US resident and former tour manager for bands such as the Rolling Stones and Dire Straits, is threatened with expulsion from his adopted homeland after his passport and green card were confiscated following a work trip abroad.

He now spends his days in a khaki prison jumpsuit as his case works its way through the US legal system and his wife and teenage daughter were reduced to tears when they saw him chained and in handcuffs in a recent court appearance.

"I was brought up to believe my country practiced the rule of law and I'm just stunned that Clem is being treated like this," said his American wife Robin Schwartz, 59 a wedding photographer, at the family home in the quiet New Jersey commuter town of Sparta last week.

"If it wasn't so upsetting, it would be like something out of Monty Python. When I visit him, it's just like the movies. We are separated by flexiglass and have to shout through slats to talk to each other. It's soul-destroying."

The turmoil in their lives has its roots in a night out with friends at a local pub in 2002. On the way home, Mr Clements, a manager at a large events production company, was arrested on suspicion of drink driving and police found a third of a joint of marijuana in his car.

He was fined, put on a year's probation and ordered to attend drug information classes as punishment for possession of 0.8 grams of marijuana, an amount so small that the authorities would not prosecute in many American cities, including neighboring New York.

The offence did not leave him subject to the threat of deportation and he thought no more of the incident, even as he flew in and out of the country on subsequent trips overseas. But in late-May, he was held for several hours at New York's Kennedy airport as he arrived home from a work trip to Italy.

For the Department of Homeland Security, the mammoth and powerful government agency created to defend America after the al Qaeda terrorist atrocities in 2001, has been updating its computer records to include thousands of offences committed by foreign residents (known as "aliens" in official US parlance).



He was eventually allowed into the country but ordered to return to the airport for what is known as a "deferred inspection". On the second such trip, on Nov 12, he was arrested, handcuffed and taken away to an immigration jail in New Jersey.

"I just could not believe this was happening to me," Mr Clements told The Sunday Telegraph in a collect call from prison. "I made a mistake and paid my penalty for the offence in 2002. I pay my taxes here, I own a house here, I have a good job here and I've raised a family and put my kids through college here.

"And suddenly I found myself in prison because of something that did not involve a day in jail at the time. It's classic double jeopardy and I just can't believe this is happening over a third of a joint."

Mr Clements, who was born in Sutton Coldfield, West Midlands, met his future wife when he was a 21-year-old backpacking around the US. They married four months later and he moved to America, working first as a "roadie" for rock groups and later becoming a tour manager for some of the world's biggest bands.

Mr. Clement heard through the grapevine that you are one of the top immigration lawyers in the area. He contacts you and asks you to represent him at the removal hearing to challenge DHS ICE's allegations in the Notice to Appear and to get him out of immigration detention. Mr. Clement wants you to answer the following two questions:

Explain under what authority DHS immigration officials are seeking to remove or deny admission to Mr. Clement and whether DHS can prevail.

Can DHS detain Mr. Clement until his immigration case is decided? If so please explain under what statutory authority.

QUESTION 4 (10 points)

Ramon, is a native and citizen of Mexico. He has resided in the United States since March 1, 1997. On December 13, 2008, the DHS issued Ramon a Notice to Appear, alleging that he was deportable under INA § 237(a)(1)(B), 8 U.S.C. § 1227(a)(1)(B).

Ramon is the father of two sons, both U.S. citizens. He resides with his two children and their mother, who is also a citizen of Mexico. Ramon claims that if the DHS removes him, his family, particularly his oldest son, will suffer an exceptional and extremely unusual hardship.

If removed, Ramon will have to take his family with him to Mexico, or be separated from them. He argues that either would result in hardship. Ramon provides the sole financial support for his sons. He has been away from Mexico for many years he will be unable to earn a living in Mexico. Therefore, he will neither be able to support his family in Mexico if they accompany him, nor be able to send them money to support them in the United States if they stay. In addition, Ramon's oldest son has a disability . Ramon's son suffers from a disability that requires him to receive special language instruction. Because of this disability, his son does not speak English or Spanish well. Ramon is certain that if he takes his son to Mexico, he will be denied an appropriate education.

Ramon has hired you as his attorney. Please write him a letter explaining what immigration relief(s) may be available to him, and what is the likelihood of an Immigration Judge granting that relief(s).

Question 5 (10 points)

President-elect Obama has appointed you as head of the Immigration Policy Transition Team (IPTT). He has asked you to recommend three changes that he should implement to “fix the broken immigration system.” After conducting numerous meetings with current and past immigration policymakers, including talking to Prof. Isgro, list the three changes that you would recommend and explain why these changes are needed.