DON'T FORGET *MATTER OF CAVAZOS* AND *MATTER OF IBRAHIM*

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Four years ago I'll never forget overhearing one of Maryland's most highly acclaimed criminal defense attorneys complaining, privately, and even despairingly, to a colleague outside a courtroom in the Circuit Court for Frederick County, "The law doesn't matter anymore." That lament comes to mind too often in my, and perhaps your, immigration work. A great example is the apparently forgotten principle – forgotten, at least until a few weeks ago, by the both the Baltimore USCIS office and at least one Immigration Judge in Baltimore (and maybe more, too) -- that "preconceived intent," standing alone, does *not* count as a adverse factor in adjudicating a discretionary adjustment of status application based on an immediate relative petition.

The office and, again, the anonymous Immigration Judge I refer to, seemed to assume otherwise -- the former issuing a NOID to one spouse, in part on preconceived intent grounds, and the latter granting adjustment to the other spouse only because his various medical conditions and long-standing links to family in the United States "outweighed" his supposed preconceived intent in entering the country in 2001 with his wife on a B-2 visa. (Both spouses were the beneficiaries of separate approved I-130s filed by the couple's 21-year old USC daughter.)

The point of this "practice pointer" is that if USCIS/Baltimore and an IJ have overlooked or forgotten this principle, you may have also – but stop doing so, and don't let the Service or an IJ get away with it!

When read together, *Matter of Cavazos*, 17 I. & N. Dec. 215 (BIA 1980) and *Matter of Ibrahim*, 18 I. & N. Dec. 55 (BIA 1981) firmly establish the proposition that in the case of adjustment of status of immediate relatives, the would-be adverse factor of preconceived intent in and of itself is, in effect, "zeroed out" by virtue of the weighty equity of the immediate relative relationship itself. It is not to be counted as an "adverse factor," in short. That proposition distinctly does *not* apply to visa-preference adjustment applicants. And, of course, it applies to no applicant, *including* beneficiaries of an immediate relative petition, where some affirmative misrepresentation accompanies the alleged preconceived intent – in which case the old adjustment of status balancing formula uttered in *Matter of Garcia-Castillo*, 10 I. & N. Dec. 516 (BIA 1964), *aff'd on reconsideration*, 10 I. & N. Dec. 790 (1964), still pertains. But both *Matter of Cavazos* and *Matter of Ibrahim,* decided when many of you reading this were not even born, are still good law, and both cases still appear in the Adjudicator's Field Manual and the IJ's Benchbook, though in the latter, the cases are not precisely discussed, regrettably.

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