

Immigration law is his specialty and passion

By SHERRY BUNTING
Special for Farmshine

PHILADELPHIA, Pa.—“You have to love people to be in this business,” says Jay Bagia, whose down-to-earth conversational style belies his more than 25 years as an accomplished attorney specializing in immigration law.

In his practice—Bagia & Associates, Philadelphia—he has worked with literally thousands of individuals, each case its own distinct story of humanity caught within the confluence of what has become a regulatory abyss.

A year ago, Bagia was among the invited specialists for two meetings about immigration at PDMP member farms—one at Duane and Marilyn Hershey’s Ar-Joy Farm, Cochranville, the other at Don and Verna Martin’s Falling Springs Farm, Chambersburg—where producers gathered to learn about regulatory changes they face as employers of immigrant labor.

“Those were such dynamic meetings,” Bagia recalls. “The producers were so smart and so responsive. They had such good questions. We were also impressed with the folks from PDMP, and we developed a friendship with their executive director Alan Novak.”

A primary concern raised by farmers at those meetings was “finding a way to form a communication link, so that if something happened to one person, the farmers could assist each other,” Bagia explains.

The Professional Dairy Managers of Pennsylvania (PDMP) has taken this friendship to a new level to forge a “Preferred Service Provider” relationship with Bagia & Associates.

The purpose of this new type of relationship is two-fold. First, the law firm has agreed to serve as an advisor to PDMP on current law, regulatory changes, and issues of compliance and enforcement as PDMP develops an advocacy position on immigration and labor.

Secondly, PDMP producer members will have access to service benefits, which are discussed in Novak’s sidebar on this page. Bagia & Associates will also lead conference call seminars and provide news briefs to alert members about important changes.

“This issue of labor is hard to narrow down, and it is increasingly important for dairy farms,” Bagia explains. “The attitude and position taken by the Department of Homeland Security has been one that tries to determine whether there is knowledge on the part of employers about undocumented workers. The use of fairly heavy-handed tactics are a big concern for employers in keeping their records neat and clean.”

Aside from sharing his expertise at dairy meetings in Pennsylvania, Bagia also spoke at a meeting of producers in western New York. “What I was hearing from both locations is the concern about the attrition of the work force,” he recalls. “The dairymen wondered: What if there’s a raid and we lose our employees? This could bring our business to a grinding halt.”

The situation in New York included concerns about workers being courted away by Canadian farmers. After they had trained them, these New York farms were losing workers, who disappeared out of fear and concern about the U.S. enforcement tactics used to send a message to employers and to foreign workers.

“It’s the realization, that these people have come to work for us. They are an integral part of the dairy farm,” says Bagia. “Beyond that, they have in many cases become part of the family. For employers in agriculture, their first concern is what happens to the business, but they are also concerned for the lives of their employees. They are good people, who supply an important commodity and economic benefits to their communities. To some Americans, the thought is that these workers are taking their jobs. But in many of these jobs, it is difficult to find the reliable work force.”

He explains the methodology for legal work



Jay Bagia, Esquire

papers as a hodge-podge of permanent and temporary residency applications. The farm can demonstrate they have tried to obtain U.S. workers and submit their labor certification application, but then there are overlapping issues such as the availability of visa numbers for these workers.

“If they’ve demonstrated the need, then they should be able to proceed efficiently and quickly to legitimize their workers to apply for long term temporary work permits or permanent residency,” notes Bagia. “But the H2A and H2B permits are difficult to obtain with the length of time, availability of visa numbers, and bureaucracy involved.”

As a full service immigration law firm, Bagia & Associates works with individuals and employers. The firm has three attorneys, five paralegals and two administrative personnel totally devoted to immigration law. The staff also speak a wide variety of languages.

Bagia, himself, is an immigrant. A native of the Fiji Islands, he was admitted to the New Zealand bar and the Supreme Court of Fiji in 1980. He met his wife, Christine Grant, while she was an American Peace Corps volunteer in Fiji. Returning with her to the U.S., he studied at the Rutgers School of Law and was admitted to the Pennsylvania bar in 1984 and the U.S. District Court, Eastern Division in 1985.

Today, his wife Christine, a former professor of psychiatric nursing at the University of



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Pennsylvania, is the firm’s office manager.

One need only speak briefly with Bagia to grasp the passion he possesses for his craft, and for the people he serves. Along with passion, he says, “You have to be patient and diligent.”

He describes, through stories and anecdotes, the convoluted system of inconsistent and overlapping codes and statutes, not to mention new attempts by authorities to use existing laws—that were passed for other purposes—as a means for heavy-handed enforcement actions against undocumented workers.

An example is the use of the aggravated identity theft statute to prosecute undocumented workers for using false social security numbers to get jobs. The U.S. Supreme Court just last week ruled unanimously that, in effect, this statute cannot be used for this purpose.

“This is an ongoing and changing landscape for which clarity and consistency are needed,” says Bagia. Apart from judicial and legislative happenings are the ever-changing nuances of compliance and enforcement to be aware of.

“It’s hard to keep up, even for a practitioner,” he notes. “The so-called I-9 form, itself, keeps changing. And, the latest thing is that when you have a worker with an official work authorization that needs to be extended, the process is changing. It used to be that if you filed the extension in a timely manner, the worker was deemed extended while the decision was pending. If you filed for the extension by June 1st for a work authorization that was due to expire June 30th, the employer could continue to keep the employee on the books until the decision came back, even if the decision process lasted beyond the expiration date. Now, they are saying that if you don’t have a decision by the expiration date, you have to take that employee off the payroll.”

This is just one example of how a procedural change can significantly alter the labor landscape for employers and employees.

Immigration Law firm will be resource for PDMP and its producer members

By ALAN NOVAK
PDMP Executive Director

Immigration law continues to be an important issue for our dairy producers because it is a workforce issue. The PDMP leadership consistently hears from producers that there is keen interest in not only where these workforce issues are headed, but how do we stay on top of all the compliance issues?

Over the past year, we cultivated a relationship with Jay Bagia and came up with a plan for Bagia & Associates to have a Preferred Service Provider relationship with PDMP—to not only provide information on the macro side about changes in Washington, but also to be a resource to help members handle practical questions they may have on compliance.

The relationship actually does three things. First, it helps PDMP as an organization to stay on top of the changes as they evolve on immigration, workforce issues, and temporary worker situations to help us develop the most effective advocacy position for our members.

Second, the Bagia firm will provide information to our membership through periodic updates on our website and through email briefings. We are also planning a conference call seminar for July or August.

And third, for individual producer members of PDMP, the law firm is a resource if an issue comes up. We hear the questions: What if enforcement folks come to my farm? What do I do? Who do I call? We wanted to help

provide an answer, so our discussions with Bagia have evolved to a structure where if members have a question, this is a team that is ready to assist them.

The first half-hour of an inquiry with Bagia & Associates would be free for PDMP members. If there is a need for a longer consultation, a flat rate of \$100 would be charged for the next one-hour beyond that first half-hour. Then, if the producer and attorney agree to proceed with representation for an issue, the firm’s services would be provided at a significantly reduced hourly rate for PDMP producer members.

This is a win-win for our members to have this proven immigration law firm as a resource for workforce issues. Bagia & Associates does it all: from working with individuals, to working with agricultural employers, like our state’s mushroom growers and dairy producers, to working with high-tech industries employing highly skilled workers.

More information about this Preferred Service Provider relationship with Bagia & Associates, including a special web link, will be available within the next week at the PDMP website: www.pdmp.org. To learn more about this and other benefits of PDMP membership, producers may call toll-free at 877-326-5993.



“This is a dramatic change and an example of how employers need to be aware of the changing system to keep very clear records,” Bagia explains. “In the case of work authorizations, we’re advising that extensions be filed 120 days ahead of expiration, which is the maximum, so you can get a decision in time.”

Bagia, a self-described optimist, sees some bright spots ahead for immigration reform. “Discussions are starting: That’s the optimistic side,” he says. “But I also use the ‘Clint Eastwood’ illustration: Whenever you have change, you can be assured of getting ‘the good, the bad, and the ugly’ because of the different interests involved in creating the change.”

He gives the example of reform in 1996 when the “unlawful presence rule” was written, and in effect, has caused workers to be barred from the U.S. for 10 years under circumstances that were at one time the normal process.

“The employer can go through the labor certification process to show the U.S. Department of Labor that he cannot find American workers to do the type of work that is being offered to the foreign worker, who may be here on a temporary work visa. But by the time the labor certificate is approved, the worker’s visa may have expired, and the foreign national is deemed out-of-status,” Bagia explains.

“Prior to 1996, you could go through this process and then file an immigrant worker petition. The foreign national could then return to his home country and go through a consular process and ultimately pick up his permanent visa with an interview at the American embassy. So, we would send hundreds of workers home to get their visas and re-enter the U.S. as legal permanent residents.

“That process is gone now,” he says, “because of the unlawful presence law, which bars a foreign national—who may have remained out-of-status in the U.S. for more than one year—from re-entering the U.S. for 10 years.”

It is along these lines that immigration reform can address the overlap, the constant push and pull of the various statutes, which illustrate how the situation for both employer and employee can change through a series of events. Bagia’s examples show the importance of having an information source to help navigate this ever-changing labor landscape.

“In this relationship with PDMP, members will have a source to go to if they so choose, to obtain accurate information and at least get a professional opinion to allow them to lay out a business plan or course of action,” says Bagia. “As this relationship develops and if a problem arises, we could initially act as that source of information on how to handle the problem. Then if a problem morphs into something needing more, other sources of reliable experts can be brought into the picture.”

For Bagia, the joy in his work is not the pursuit of awards or publicity. The real joy can be found in the files full of thank-you cards and notes from individuals. “Helping people is the social, human side to this practice,” says Bagia, who also takes non-stop questions during his monthly call-in broadcast on radio-HOLA, a Spanish station based in Allentown.

“I’ve been doing this for 25 years, and every time I win a case and save an individual from deportation, it is a chemical reaction that I can’t explain by words,” he says. “The end result of processing applications and handling these cases is often the fulfillment of the dreams and aspirations of individuals, who have given so much of their lives to the U.S. and would want a future for themselves and their families in this great country of ours.”