

**FINAL EXAM
ADMINISTRATIVE LAW
SUMMER 2007**

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JULY 26, 2007

INSTRUCTIONS:

The final exam consists of two separate essay questions each with multiple legal issues. Identify the legal issues, the associated rules of law and explain how the rules apply to the issues and the facts. Discuss rationale and policy wherever relevant. A conclusory answer will not get much credit so make sure your answer is complete. Each question and answer will carry equal weight towards the final grade.

Admin Law 2007
Final Exam Question 1

Congress adopted the Al Qaeda Extermination Act of 2007 (ALQEA) intended to minimize the risk of terrorism in this country from Al Qaeda and its associate groups. An important provision of the act is the express intent to regulate the proliferation of immigrants from Middle Eastern countries. The legislative history is replete with statements by congressional leaders expressing concern over the apparent ease by which terrorists can enter this country through legal as well as illegal means. Because of the seriousness of the issue, Congress delegated power to the President authorizing him to take whatever steps necessary and appropriate to limit immigration from the Middle East.

ALQEA creates an independent agency ("Agency") to assist the President in this effort. The agency is provided with the authority vested in Sections 553 and 554 of the Administrative Procedures Act and with an oversight commission empowered to veto final decisions of the Agency. The commission is comprised of five members appointed by the President for six year staggered terms. Four members must be from the Senate with two from the Republican Party and two from the Democratic Party. The fifth member must be from the U. S. Supreme Court. ALQEA is silent with respect to judicial review, but it provides sanctions for violations of the act; such as civil penalties, detention, deportation and imprisonment. The Agency also is provided with subpoena power, wiretap authority, and access to the FBI.

A provision of ALQEA provides in pertinent part:

"... any person found guilty of violating any rule, regulation, or requirement of the ALQEA is guilty of a felony and may be fined, detained, subject to deportation, and in appropriate cases imprisoned consistent with due process guaranteed by the U. S. Constitution."

You are retained by an organization called the Council for Fairness to Middle Eastern Immigrants (CFMEI) and instructed to file a lawsuit challenging the Constitutionality of ALQEA. CFMEI wants a briefing with respect to the legality of ALQEA and your proposed litigation strategy. Discuss the Administrative Law principles and the applicable law you determine are relevant to the task. Be sure to include appropriate policy to support your position.

Question 2

Pursuant to the ALQEA, referenced in Question 1, the agency promulgated, the "immigrant registration rule" which imposes a two year probationary period on all immigrants from the Middle East. The rule requires registration with the agency, within 30 days of arrival in the U.S., of the name, address, telephone number, e-mail address and place of employment for each immigrant ("registration information"). The rule was published in the Federal Register and comments were solicited from interested parties and the public prior to its effective date. Under the registration rule, the agency must be notified of any changes to the registration information within seven days of the occurrence. After two years, the agency shall make a determination, in its discretion, whether the immigrant is a threat to national security. If the determination is "no threat", the immigrant will have to report the registration information every five years (without the 7 day change requirement) or until the immigrant is granted citizenship. Once citizenship is attained, registration information requirement is suspended. If the determination is "uncertain", the two year registration rule is renewed for two year intervals until a "no threat" conclusion is rendered. If the Agency determines at any time, by a preponderance of the evidence, that an immigrant "is a threat" a deportation hearing must be scheduled forthwith. Since such a designation is a serious accusation, Congress expressly found it reasonable to presume the immigrant is dangerous and therefore detention, in the discretion of the agency, is permitted until the deportation hearing is concluded or until the presumption is rebutted.

Akim Abdullah, his wife and family, Iranian nationals, legally obtained visas to enter the United States. He was recently employed at a hospital in Glasgow, Scotland for five years and was hired to work for Martin Luther King Hospital as a neurosurgeon. Akim filed the appropriate papers for U. S Citizenship, entered the U. S and proceeded to find a residence for himself and his family. After 30 days expired, Akim decided not to register because he felt the regulations were discriminatory, an affront to his dignity and violated his due process rights. He eluded the authorities for several months, but was finally arrested and detained by agency investigators. Primarily because of his evasiveness and his national origin, the Agency deemed Akim a "threat to national security" and scheduled a deportation hearing 30 days from the date of his apprehension. The Agency indicated that a final decision could be expected in about 60 days after the hearing. His wife registered herself and the children 45 days after entry into the U.S. The Agency notified Ms. Abdullah that she was being fined \$ 100/ day for each day over the 30 day deadline for a total of \$1500. In addition, she was instructed to pay the fine within 30 days or a deportation hearing would be scheduled for her and the children. She made two attempts to visit her husband but was denied access on national security grounds.

Discuss the constitutionality of the agency regulations and the due process rights available for the Abdullahs. Explain any legal problems you perceive with Agency's action and explain any corrective recommendations to eliminate such problems.