

Column 36

From the Bench and Beyond

Retired District Judge Janice P. Dreiling

Oklahoma's New Immigration Law: Part 6

When Oklahoma's comprehensive immigration law goes into effect November 1, 2007, no illegal immigrant fourteen years of age or older will be able to obtain federal, state or local public benefits with the exceptions of emergency medical care, short-term non-cash emergency disaster relief, immunizations or other treatment for communicable diseases, and short-term shelter or soup-kitchen type services.

Last week the provisions regarding "public benefits" (Section 8 of House Bill 180), were presented as they relate to children 14, 15, 16, and 17.

An example of the reality of the requirements of Section 8 is as follows: An illegal immigrant mother of three children, ages 2, 8, and 15, applies to DHS for food stamps on November 1 or after. All the children were born outside the United States. Assuming the household income meets eligibility for food stamps, they will be approved for the 2 year old and the 8 year old, but not for the 15 year old or the mother. So, as a practical matter, the mother would receive 50 per cent of the total benefit she would have received if she and her children were citizens. Her application, assuming she is truthful about her illegal status, could ultimately result in her deportation.

In regard to a pregnant illegal immigrant, it is my understanding that no prenatal or other medical services could be made available to her as of November 1. When the baby is born, however, since the baby would be a United States citizen, then medical benefits could be accessed by the mother for the baby but not for the mother. And, of course, the status of the mother's citizenship might result in her eventual deportation.

HB 1804 requires all applicants for federal, state, or local benefits to verify their "lawful presence in the United States" by signing an affidavit under penalty of perjury that (1) he or she is a U.S. citizen, or (2) he or she is a qualified alien under the federal Immigration and Nationality Act AND is lawfully present in the U.S. All state and local agencies and political subdivisions are required by HB 1804 to provide notary public services at no cost to the applicant so that the applicant can execute the affidavit under oath and under penalty of perjury.

The agency or political subdivision is required to verify the citizenship status of every applicant for benefits by utilizing an electronic system operated by the Department of Homeland Security and known as the "Systematic Alien Verification for Entitlements Program" (a/k/a SAVE).

Until verification of citizenship status is accomplished, the agency or political subdivision may proceed with the application for benefits based upon the affidavit of the applicant and the presumption the applicant is legally present in the U.S.

Section 8 further provides penalties for any applicant who knowingly and willfully makes a false, fictitious, or fraudulent statement in the affidavit. A false affidavit could result in criminal charges either on the state or federal level. On the state level, an applicant could be charged with perjury or obtaining public assistance by fraud,

both of which are felonies carrying possible prison time. A false affidavit for local or state benefits could also result in federal charges for the crime of “making a false claim of U.S. citizenship,” the possible penalty for which is up to three years in a federal prison.

To the extent an illegal alien parent would apply for benefits for his/her child and truthfully state he/she is illegal, the child may receive the benefit, but the parent risks deportation.

Section 8 further requires that every state agency or department that administers ANY program of state or local public benefits provide an annual report to the Governor, President Pro Tempore of the Senate and the Speaker of the House with respect to its compliance with the requirements of Section 8.

In addition, Section 8 requires a second annual report to the U.S. Department of Homeland Security in which each agency and department, after monitoring the SAVE Program, reports “errors and significant delays” in verification of citizenship status and makes recommendations for improvement or correction of the program.

Subsection H of Section 8 clearly summarizes the intent of Section 8: “It shall be unlawful for any agency or a political subdivision of this state to provide any state, local, or federal benefit in violation of the provisions of this section” to any illegal alien 14 years of age or older.