

FINAL EXAMINATION
BUSINESS IMMIGRATION
PROFESSORS MARSH and CHRONIS
SPRING 2006

1. You have **two (2) hours** to complete this exam.
2. This is an **open book** exam.
3. This exam is worth 100% (100 points) of your final grade. The exam consists of three parts, with one fact pattern and three (3) essay questions:
 - a. Question 1 (50%): **50 points**
 - b. Question 2 (25%): **25 points**
 - c. Question 3 (25%): **25 points**
4. Please write your response in the blue books provided. Please write clearly and legibly. Write on every other line and every other page to permit instructor comments.
5. Write your exam number on your exam envelope, at the top of this page and every page of questions thereafter, and each blue book you use. **Do not** use your name, student ID number or Social Security number on any exam materials.
6. At the conclusion of the exam, return all exam materials to the exam envelope and submit it to the proctor. Do not seal the envelope. Students who do not return all exam materials at the end of the exam may not be graded.

GOOD LUCK!

FACT PATTERN

You are the head of the immigration department of the San Francisco law firm of Greene & Cardoni. The date is May 10, 2006. You arrive at your office at 8:30 a.m. and receive yet another e-mail from Ms. Dono, human resources manager of NanoNu, Inc. a US corporation headquartered in San Francisco. NanoNu is a promising start-up in nano technology with 150 employees in the U.S. and gross annual receipts of \$5 million in 2005. Ms. Dono has been in HR for nearly 3 years but is still confused regarding the difference between nonimmigrant and immigrant visas, and does not have a clear grasp of the requirements for permanent residence, particularly PERM. NanoNu's wholly owned subsidiary in the United Kingdom, NanoNu2, Ltd. has successfully transferred two employees to the United States facility to support the launch of their new products. You have ably assisted the company with their nonimmigrant needs and now Ms. Dono informs you that NanoNu would like to keep the transferred employees permanently and hire a third foreign employee to work permanently in the US.

PART ONE

Essay Question 1: 50 Points

Recommended Time: 1 hour

CANDIDATE #1: SENIOR SOFTWARE ENGINEER, BIOENGINEERING

Samuel Lee is a native born citizen of Taiwan with a Masters degree in Bioengineering from Stanford University. He is currently employed by a large biotechnology company in the US. He is in his fifth year of H-1B status and feels that his current company is not doing enough to assist him in getting permanent residence. He has a labor certification application pending at the DOL Backlog Reduction Center which was filed by his current employer in June 2002 as an RIR case. His attorneys cannot give him a good estimate of his RIR processing time or if it will even be approved. He asked his current employer to file a PERM application on his behalf but the employer has informed him that because of budget cutbacks and layoffs, they cannot afford to file any PERM applications at this time. NanoNu, Inc. would very much like to hire Mr. Lee permanently. Ms. Dono, the NanoNu, Inc. HR manager, is concerned that he is running out of time in H-1B status and she has heard that PERM applications are time consuming and difficult although she really doesn't know much about them. Mr. Lee will not accept employment unless the company promises to file a PERM application on his behalf.

Your task: Please provide Ms. Dono with an overview of the prospects for meeting the company's and Mr. Lee's needs, indicating what strategy or strategies you recommend and what issues she should be aware of. Your response may be in narrative or outline format, or a combination thereof. Please also indicate what

further information and documents you will require in order to proceed with the strategy. Please be sure to identify any problems or issues that might arise. In this regard, please state any assumptions that you are making in order to develop your strategy and/or to identify problems or issues.

PART TWO

Essay Question 2: 25 Points

Recommended Time: 30 Minutes

CANDIDATE #2: DIRECTOR OF R&D:

Dr. Delvin, a citizen of South Africa, successfully transferred to the US from the U.K. office in H-1B status earlier this year. He has a Ph.D. in molecular biology from Oxford University in the UK and worked for NanoNu2, Ltd. for 12 months prior to coming to the US. (Please note that at the time his H-1B petition was filed, he had been employed with NanoNu2 Ltd. for only 11 months.) While in the UK, Dr. Delvin led the development of several new and promising nano technology products. During his career Dr. Delvin has been instrumental in developing several cancer drugs and numerous anti-aging products. Dr. Delvin's assistance in developing NanoNu's new nanotechnology devices has been critical to the success of their recent product launch. NanoNu, Inc. would like to keep Dr. Delvin permanently and seeks your advice in maintaining his current work authorization and obtaining permanent residence on his behalf.

Your task: Same as Candidate #1 above, but for Dr. Delvin.

Please note: When discussing recommended procedures you do not need to repeat any overlapping details and processes, but do reference your previous discussion where appropriate.

PART THREE

Essay Question 3: 25 Points

Recommended Time: 30 Minutes

CANDIDATE #3: TECHNICAL SUPPORT SPECIALIST

NanoNu, Inc. employed Ms. Trudy Smart, a citizen of Canada, as a technical support specialist to perform research in their Nano Technology lab. Ms. Smart completed her Masters degree in electronics at UC Berkeley in December 2005 and is currently working pursuant to her Optional Practical Training/Employment Authorization Document

(EAD), which expires in December 2006. NanoNu, Inc. wants to make sure Ms. Smart can continue her employment indefinitely while the company pursues permanent residence on her behalf. Ms. Dono has informed you Ms. Smart's fiance, an Indian National, has a pending I-140 application and plans to stay permanently in the US.

Your task: Same as Candidate #1 above, but for Ms. Smart.

Please note: When discussing recommended procedures you do not need to repeat any overlapping details and processes, but do reference your previous discussion where appropriate.

END OF EXAM