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Day Pitney Secures Pro Bono Second Circuit Victory in Immigration Case

(Hartford, CT, February 27, 2015)--Day Pitney recently secured a victory from the Second Circuit in a case that represents both a significant win for pro bono client Edson Flores and a significant precedent for immigrants seeking relief from removal orders.

Mr. Flores, who proceeded pro se in his initial removal proceedings, was originally ordered removed from the United States in 2012. At that time, Flores' wife, a U.S. citizen, had filed a visa petition on Mr. Flores' behalf with the Department of Homeland Security. If granted, that petition would have allowed Mr. Flores to apply for permanent residency in the United States. So Flores asked an immigration judge to grant a continuance of his removal proceedings pending a decision on his wife's visa petition. The immigration judge denied the requested continuance, however, and the Board of Immigration Appeals affirmed. According to the Board, Mr. Flores' requested continuance was futile because, even with a visa, his prior New York state criminal conviction for sexual contact constituted an aggravated felony, which rendered him ineligible for permanent residency.

Mr. Flores petitioned for review of that decision, and the Second Circuit appointed Day Pitney to represent him.

Accepting Day Pitney's arguments, the Second Circuit held, in a precedential opinion by Judge Chin, that the agency's denial of the continuance was based on two separate legal errors. For one thing, the Board had wrongly concluded that an aggravated-felony conviction would render Flores ineligible to become a permanent resident. For another, the Board had applied the wrong legal test in making its aggravated-felony determination--it looked to the particular facts of Flores' case, instead of considering whether the New York statute at issue categorically qualified as an aggravated felony in all of its applications. As a result of these errors, the Court granted Flores' petition in substantial part, and it remanded the case back to the Board.

Litigation counsel John Cerreta led the Day Pitney team, with support and supervision from litigation partner Erick Sandler.