Global Migration Section

AILA Global Migration Section Digest

WELCOME

By Noriko Kurotsu – Noriko is a Global Immigration Attorney at McCown & Evans LLP in San Francisco, California

The GMS Publications Committee is pleased to issue this first GMS Digest of the AILA year. In this Digest issue you will find our new Spotlight Interview feature as well as articles regarding immigration issues stemming from Brexit; immigration developments in Canada; dual citizenship in Lithuania; an overview of Tanzanian immigration law; and the impact of new legislation on same sex partnerships on Italian immigration law. Special thanks to the article authors and Publications Committee Members: Esther Dressler, Poonam Gupta, Helen Smith, and Susanne Turner for their work in producing this digest.

SPOTLIGHT INTERVIEW SERIES

Focus on The Philippines

Russel L. Rodriguez B.A. LL.B. (Philippines) practices Law with SyCip Salazar Hernandez and Gatmaitan in the Philippines

1. How the practice of immigration regulated in your country?

In the Philippines, the practice of immigration is regulated through the Bureau of Immigration, affecting both outbound and inbound immigrants, which issues all work and residence visas. Practicing in the field of immigration law is limited to Philippine lawyers in good standing.

2. Does the Philippines have any quotas or other general requirements, such as registrations of a company, to be able to send employees?

Major quotas and immigration limitations are enforced on a sector-wide basis. For example, companies in both industrial and export zones are subject to a 5% cap on foreign workers within their total work force. The purpose of this 5% cap is to ensure that these companies, many of whom receive significant government tax breaks, save jobs for local citizens. These limitations can have a big impact for foreign companies in the electronics and garment industries.

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Call for Articles

Interested in getting involved in GMS? Consider publishing an article in the Digest or participating in a Spotlight Interview! We publish the digest quarterly and welcome articles and immigration updates from all non-U.S. jurisdictions. For more information regarding Digest guidelines, please contact a member of the Publications Committee.

3. Description of the basic immigration process for a business wanting to send an employee on an intracompany transfer to the Philippines.

The first thing to determine is whether the individual is applying for a business or a work visa, as in the Philippines these are two separate applications. The distinction here is largely based on the nature of ownership over the work product.

Afterwards, the process is determined by how long the individual seeks to remain in the country, with the differentiating point being 6 months. If the individual seeks to come for less than 6 months, they apply for a special work permit (with the ability to extend for 3 months) by just filling out a series of forms. There is no interview required!

However, if the individual seeks to come for more than 6 months, the company must publicize the job opening to first seek to find a Philippine to do the job. For certain codified specialized industries like mining, the government has out and out set a ban on foreign workers, unless they possess sufficient specialized technical knowledge that cannot be found anywhere in the market. The criteria for an application is often very situation specific. As part of the application, information must be submitted including the time length of the position, lack of Philippine citizen to take the job, necessary business permits to complete the job and documents proving the legitimacy of the company, amongst other documentation.

4. Does the Philippines allow a company to send newly hired employees?

Yes!

5. Do partners or same sex spouses qualify for dependent status in your jurisdiction?

Same sex marriage is not legal in the Philippines, and as a result, there is no legal avenue available for partners or spouses to gain dependent status.

With regard to marriages that are legal in the country, a major point of distinction here revolves around how long the individuals seek to stay in the country. If it is less than 6 months, typically the dependent will apply for a tourist visa, or if they intend to work, they can apply for a spousal work permit for this period of time.

If the desired work permit is longer term, then the individual must go through the same process as their spouse.

6. What advice would you give a client thinking about sending employee to your jurisdiction? Are there any tips you might want to share (e.g. select employees with a university degree if possible, etc.)?

It is not complicated to send employees to the Philippines, provided they can meet the necessary requirements. One of the most important considerations to make when deciding whether or not to send someone involves their possession of special skills. General immigration regulation in the country is not overly accommodating to “blue collar work”, as such a market is sought to be preserved for the locals. Higher education is also a big plus. Applicants can expect an interview when applying for visas, this is not unusual.

A recent issue has come about with regards to hiring of foreign workers en masse. If a local organization chooses to protest the hiring, such can create big problems for the new employees’ successful immigration. We have seen examples of this in the past within the mining and entertainment industries.

7. Are there any hot topics or trends you wish to share?

A hot topic in Philippine immigration involves the influx of foreign employees coming to practice specialized professions (engineers, accountants, architects etc). The immigration code has been recently revamped to categorize these individuals technically as employees, despite their potential to work on their own. As such, there are additional permits required for these professionals.

Another issue that has drawn a lot of attention lately deals with the availability of "Retirement Visas". Depending on ones' age and ability to invest in local Philippine projects, an individual may be able to qualify for this program. We have seen a notable spike in the popularity of this program from both American and South Korean immigrants.

BREXIT: CERTAINTY IN UNCERTAIN TIMES

By Philip Trott – Philip is the Head of Immigration at Bates Wells Braithwaite in London, United Kingdom

No one expected the UK to vote to leave the EU. Now there is a great deal of uncertainty in respect of the future status of EEA nationals currently working in the UK, the extent to which EEA nationals will be prevented from coming to work in the UK and the status of British citizens who are currently living and working in the EEA.

This uncertainty is likely to continue for some time. EU law will continue to apply to the UK until the UK has formally left the EU, which is likely to take up to two years after the triggering of Article 50 of the Lisbon Treaty.

In the interim, the importance is to attempt to create some certainty for EEA nationals living in the UK as those who do not have documentation to evidence their status in the UK (none is needed as a matter of law) will undoubtedly be more vulnerable at ports of entry and when living in the UK. It is sensible for EEA nationals to take practical steps to protect their positions and formalise their status as soon as possible.

The following options should be considered:

1. EEA nationals and their dependents that are in the UK should consider whether they are eligible to apply for a permanent residence card based on five (5) years' lawful and continuous residence in the UK. They should keep an accurate schedule of absences and maintain records of work or any other connection to the United Kingdom to assist with their application. Note that some people qualify for permanent residence despite not having completed five (5) years' continuous residence.

2. If the EEA nationals (or their dependent) is not eligible for permanent residence yet, they may wish to apply for a registration certificate which evidences that they are exercising an extended right of residence in the UK. They should ensure that they continue to retain sufficient evidence that they are

exercising Treaty Rights. A timetable should be created to identify when they will be able to apply for permanent residence and should make this application as soon as possible.

3. If the EEA national (or their dependents) is eligible for permanent residence and they can provide evidence to show that the qualifying five (5) year period ended at least one (1) year ago, they will be able to apply for naturalisation once they have received their permanent residence card.

4. It is advisable to obtain specific advice before making an application for permanent residence since this may have adverse tax consequences for an applicant or lead to the loss of that person's existing nationality as some EU countries do not permit dual nationality.

5. Preparing an application for permanent residence is burdensome and time consuming. On average, it takes around six (6) months for the Home Office to make a decision on an application, though this commonly takes longer. It is likely that this time scale will increase significantly due to the influx of applications since the EU referendum results.

6. Each British citizen (who does not have another EEA nationality) should consider whether they already have/can obtain citizenship of another EU country through ancestry, marriage or residence, in order to protect their status in another EU country in the event that you were to employ them there.

7. An EEA national who is married to a British citizen or one with indefinite leave to remain in the UK could apply to get leave to remain based on their marriage. This would not be lost when the UK left the EU.

Finally, employers should audit the immigration status of their workforce in the UK and across the EEA. While it is uncertain what will happen, an audit will enable employers to identify who may be affected if and when the current immigration rules do change.

DUAL CITIZENSHIP IN LITHUANIA

By Valters Gencs – Valters Gencs is an Advocat at Gencs Valters

Reinstatement of Citizenship in Lithuania

Recently the Lithuanian government enacted an amendment to the Law on Citizenship of Lithuania. The amendment eases a path to reclaim citizenship in Lithuania.

Reinstatement of citizenship of Lithuania allows individuals to exercise the right to reinstate citizenship of Lithuania in accordance with the procedure laid down by the Law on Citizenship of Lithuania. Persons who held citizenship of Lithuania before 15 June 1940 and their descendants, who have not acquired citizenship of Lithuania before the entry into force of the Law on Citizenship of Lithuania, shall have an indefinite right to reinstate citizenship in Lithuania, irrespective of whether they are permanently resident in Lithuania or in any other state.

Generally, under the citizenship law, persons who held citizenship of Lithuania before 15 June 1940 and their descendants may reinstate citizenship of Lithuania provided they are not citizens of another state, however, exceptions apply.

When requirement to refuse citizenship of another state does not apply

The requirement to renounce citizenship of another state does not apply to persons who may be citizens of both Lithuania and another state at the same time:

- Such is a person who was exiled from the occupied Lithuania before 11 March 1990 and acquired citizenship of another state;
- Such is a person who left (recent amendment) Lithuania before 11 March 1990 and acquired citizenship of another state;
- Such is a person who is a descendant of a person who was exiled from the occupied Lithuania before 11 March 1990 or who **left** Lithuania before 11 March 1990.

Other requirements when dual citizenship in Lithuania is possible

Citizens of Lithuania can simultaneously hold citizenship of another state if s/he satisfies one of these conditions:

- Such is a person who obtained citizenship of Lithuania and citizenship of another state at birth;
- Such is a person who entered into marriage with a citizen of another state and automatically (ipso facto) acquired citizenship of that state;
- Such is a person who is below 21 years old, if he or she has been adopted by citizen(s) of Lithuania before turning 18 years old and due to this fact acquired the citizenship of Lithuania;
- Such is a person who is below 21 years old, if he or she is a citizen of Lithuania and has been adopted before turning 18 years old by citizen(s) of another state and due to this fact acquired citizenship of another state;
- Such is a person who acquired citizenship of Lithuania by way of exception, while holding the citizenship of another state;
- Such is a person who acquired citizenship of Lithuania while holding the status of refugee in Lithuania.

Conclusion: Individuals can reinstate citizenship in Lithuania and do not have to refuse their present citizenship. Requirement to renounce citizenship in Lithuania does not apply in a given circumstances. Dual citizenship in Lithuania is possible.

CANADA: WHO NEEDS AN ELECTRONIC TRAVEL AUTHORIZATION?

By Aris Daghighian - Aris is an associate at Green and Spiegel LLP in Toronto, Canada

As of September 29, 2016, new entry requirements will be in effect for many travellers to Canada. Visa-exempt foreign nationals, who fly to or transit through Canada, will be required to have an Electronic Travel Authorization ("eTA").

There are three main exceptions to this requirement which do not require an eTA:

a. U.S. citizens;

b. travellers with a valid Canadian visa; and

c. those entering via a travel method other than air (i.e. land and sea).

Note that having a U.S. ESTA is not an exemption from obtaining a Canadian eTA.

eTA applications are made online and cost $7 CAD. Most eTA applications are approved within minutes of applying. However, there may be delays if there is a ground of potential inadmissibility or investigation. These grounds can include, but are not limited to, any (even minor) prior criminality, a medical condition, and past immigration refusals in Canada or elsewhere in the world.

In many instances, these issues have remained latent for visa-exempt foreign nationals who have previously travelled to Canada without incident. It may come as a surprise and confusion to face denial of entry for issues that have never before caused concern.

In such circumstances, the individual may be asked for more information and/or directed to their nearest visa office. When responding to such inquiries, it is best to seek the advice of qualified legal counsel.

Failure to answer a question truthfully during the eTA process may lead to a finding of "misrepresentation", which can in turn result in a five (5) year bar from Canada. Even seemingly benign inaccuracies can have significant consequences.

Once approved, an eTA is valid for five years or until the individual's passport expires, whichever comes first. If a new passport is obtained, a new eTA application is required. This is due to the fact that the eTA is

associated with an individual's passport details. An eTA number will be issued but no physical document will be provided. Airlines will be able to verify the validity of an eTA by scanning an individual's passport prior to allowing boarding of an aircraft destined for Canada.

The eTA process will also have a significant effect on Canadian dual-citizens and permanent residents:

A. Dual Citizens

Dual-citizens of Canada and a visa-exempt country can no longer use their non-Canadian (e.g. U.K) passport to fly to Canada. Such citizens are also not permitted to apply for an eTA online. This is because the eTA process was established to screen foreigners for admissibility to enter Canada. Citizens have a right to enter Canada without such screening.

As such, at the end of the transition period, dual-citizens will need to show proof of Canadian citizenship before being allowed to board a flight to Canada. Acceptable documents are:

a. valid Canadian passport;

b. Canadian temporary passport; or

c. Canadian emergency travel document.

B. Permanent Residents

Likewise, the same applies to Permanent Residents (PRs). A valid Canadian PR card will be required to enter Canada via air. Canadian PRs will no longer be able to travel to Canada with only a visa-exempt passport. As with citizens, PRs *cannot* apply for an eTA.

Those who do not have PR cards, or whose PR cards are expired, must wait until their application for a (new) PR card has been processed. Currently, this can take several months. Especially in cases with complications incalculation of the residency obligations, extended processing time can occur.

In urgent situations, PRs can potentially apply for a permanent resident travel document (PRTD) to the visa application centre (VAC), which serves the country and area they are visiting from outside Canada. A PRTD is valid for only one (1) re-entry into Canada and is issued in exceptional cases only.

BREXIT: THE IMMIGRATION CHALLENGES

By Katrina Cooper, Director at PwC Legal LLP, London, with the support of Desi Lance and Amrita Singh, Senior Associates.

The ramifications of the historic UK referendum on EU membership in June 2016 are still emerging. 52% of voters voted to leave the EU and while the complex process of withdrawal is under discussion there have already been significant political and economic changes.

The vote itself is not legally binding, though the government has made clear that the outcome of the referendum will be respected. The immediate

impact for the 3.5 million EU nationals living in the UK and over 1.2 million British citizens in the EU is uncertain. It is important to remember that the legal position of EU migrants has not changed, nor will it, until a formal exit occurs.

The process for the UK's withdrawal will formally begin when Britain gives official notice under Article 50 of the Lisbon Treaty. Unless extensions are agreed, the timing for leaving is two years from the official notice. Prime Minister, Theresa May has indicated Article 50 will not be triggered before the end of 2016. The assumption is that during the two-year window new agreements will be negotiated with the EU, but Article 50 does not require this.

Legal challenges will be heard in Autumn 2016 concerning whether the government has prerogative power to trigger Article 50 without a decision of Parliament. In light of the way the parliamentary constituencies voted it is unlikely a majority of Members of Parliament would vote against Brexit in Parliament, even though many voted against it personally in the referendum. It is safe to assume that 'Brexit means Brexit'.

Key to the negotiations with the EU will be the UK's access to the European single market, which EU leaders say is conditional on free movement. The potential outcomes range from a 'soft Brexit' where the UK joins Norway and others in the EEA and accepts free movement, to a 'hard Brexit', with no freedom of movement. An outcome closer to a 'hard Brexit' is more likely politically, in line with the expectations of leave voters. This will entail major changes to the existing UK immigration framework.

Transitional arrangements for EU citizens living in the UK are being considered as part of these scenarios. For the estimated 71% of EU nationals who have been exercising treaty rights by working, studying or being self-sufficient in the UK, it is widely expected although not officially confirmed that their right to permanent residence in the UK will be protected. Individuals with permanent residence under EU law can, if they wish to and meet all the requirements, apply for British citizenship. Many British citizens living in the EU are also considering citizenship options. For those who have been in the UK less than 5 years, the issue is more uncertain.

During this period of uncertainty, employers are advised to identify their impacted workforce both in the UK and the rest of the EU and in their supply chains. Employers should review talent acquisition and retention strategies and recruitment policies and prepare contingency plans in anticipation of Brexit.

Careful communications must be given to those affected by the changes. We have already seen the first employment claims in the UK from those who feel discriminated against by corporate communications.

Many employers are supporting registration and permanent residence applications for EU citizens, which although simply declaratory of their existing EU rights are helpful to document their position. The UK government is considering ideas to improve the efficiency of the application process to deal with the demand.

Despite the parliamentary recess over the summer, the Government has been considerably active and we expect key announcements to be made in Autumn 2016. Without doubt this will be a long running story.

SAME SEX CIVIL PARTNERSHIPS AND COMMON LAW PARTNERSHIP IN ITALY

By Marco Mazzeschi - Marco is the Founder of Mazzeschi law firm with offices in Rome, Milan and Florence, Italy

Until now, Italian law did not recognise gay couples. Under Italy's constitution, marriage is defined as between a man and a woman. An important new law (Law 76/2016) affords gay and civil unions most of the rights of marriage, except parenting, and took effect on 5 June 2016.

Same Sex Civil Partnerships

The new law allows civil partnerships between two members of the same sex, described *as 'Formazioni Sociali Specifiche'* (Specific Social Unions). A registrar legally forms the partnership in the presence of the partners and two witnesses and registers the union in the marital archives. Those who are already married, are blood relatives, or have committed or attempted homicide against a previous partner cannot engage in a civil partnership.

Civil partnership rights and obligations are very similar to those of marriage, with some notable differences. Stepchild adoption remains prohibited, and parties involved in the union are not bound to fidelity.

Obligations

A civil partnership requires reciprocated personal and material support and cohabitation. Both parties are required to contribute to shared needs, in accordance with their individual financial means and can work both professionally and in the home. Unless stated otherwise - for example in a separation of property agreement - civil partnership involves the sharing of goods and property.

Rights

Both parties have the right to take the other's surname, putting it before or after their own. Partners are entitled to the survivor's pension, any severance package awarded to the other and inheritance, having an automatic right to a portion of the inheritance as per Italian Law.

Dissolution of Partnership: Immediate Divorce without Separation

To dissolve a civil partnership, one of the partners can communicate to the registrar their desire to end the union. Three months after this communication, they can request a formal divorce. This can be done either in court, through assisted negotiations, or by agreement approved by a registrar. In divorce, the judge may award the 'weaker' partner rights to an alimony (post-separation economic provision) and the right to live in the shared home. Lack of consummation of the partnership is not recognised as a reason for divorce.

Impact on Immigration and Citizenship Law

Clause 20 of the new legislation establishes that articles referring to marriage, or containing the words *'Coniuge'* (Spouse), *'Coniugi'* (Spouses), or equivalent terms in primary and secondary legisalation, now apply to same sex civil partnerships. This is also thought to apply to legislation regarding immigration and citizenship, and that referring to *'moglie'* (Wife), *'marito'* or *'sposo'* (Husband), the law is extended to those who are civil partners. Same sex civil partners have the same options of applying for spouse visas and nationality as heterosexual married couples and those applying for Italian visas can apply to bring their same sex civil partners with them to Italy.

Common Law Partnership or Partnership in fact

The new legislation also deals with unmarried couples in both heterosexual and homosexual relationships. Couples in a 'marriage-like relationship' who live together and support each other personally and materially, can be considered domestic partners. To formalize the relationship, the partners – or just one - send a declaration form to the local government office, asking to apply for *'Convivenza per vincoli affettivi'* (common law partnership).

Rights

Some of the rights granted to married couples are extended to domestic partnerships. For example, cohabitants can designate a partner as their delegate with regards to organ donation, funeral arrangements and healthcare

in cases of illness. If the partner who is the homeowner dies, the surviving partner has the right to stay in the home for two to five years.

At the end of the cohabitation, the partners may request an alimony. A judge must confirm this and can decide both the amount of the alimony and the duration for which it is provided, taking into account the length of the partnership.

Cohabitation Contract

Domestic partners can enter into a cohabitation contract, to outline their financial relationship and assets. The contract must be signed in front of a lawyer or notary, who must register the contract with the local registry office, making it enforceable against third parties.

Impact on immigration and citizenship law

The new law does not grant the same rights to those in a domestic partnership, as to those in civil partnerships. Law 76/2016 does not affect immigration and citizenship provisions. Regardless of whether there is a cohabitation contract, domestic partners cannot apply for a family permit or citizenship based on their relationship.

THE ABC's OF RESIDENCE AND WORK PERMITS APPLICATIONS IN THE UNITED REPUBLIC OF TANZANIA

By Christopher Giattas – Christopher is a Partner at the Kilindu Giattas & Partners firm in Dar es Salaam, Tanzania

Background:

A foreigner who plans to reside in the United Republic of Tanzania ("Tanzania") for the purpose of investment, business, employment or any other activity is required to secure the appropriate residence and/or work permit prior to living and working in the country. The issuance of residence permits is governed by the Immigration Act No. 7 of 1995 and its Regulations of 1997 as amended from time to time (the "Immigration Act"). The issuance of work permits is governed by the Non-Citizens (Employment Regulations) Act No. 1 of 2015 (the "Non-Citizens Act"). The authority to issue Residence Permits is vested on the Commissioner General of Immigration Services while the Labour Commission has the authority to issue Work Permits.

Residence Permits:

The Commissioner General of Immigration Services issues the following three (3) types of residence permits:

Class A: Class A Permits are made available to foreigners who engage in trade, business, agriculture, animal husbandry, prospecting of minerals. or manufacturing.

Class B: Class B Permits are issued to foreigners who have been issued work permits to conduct secured employment in Tanzania.

Class C: Class C Permits are issued to foreigners who wish to enter and reside in Tanzania for purposes other than those specified for the grant of Residence Permit Class "A" or "B". The Class C permit is issued to students, researchers, volunteers, persons attending cases in Courts of Law, persons who have formerly been residents and are about to leave the country (i.e. winding up affairs), and persons attending medical treatment in hospitals.

Residence Permits are usually issued for a period of two (2) years and are renewable.

Classes of Work Permits:

The government of Tanzania requires non-citizens to secure a work permit (or certificate of exemption) prior to engaging in any occupation for reward, profit or non-profit.

In reviewing a request for a work permit, the Tanzanian Labour Commissioner assesses whether an applicant possesses qualifications or skills that are necessary for the proposed employment in Tanzania; that his or her employment will be of benefit to the country; and that all possible efforts have been explored to obtain a local expert for a particular position.

There are five (5) categories of work permits issued to foreigners intending to take employment in Tanzania; these are all processed and issued by the Labour Commissioner.

Work Permit Class A: Available to investors and self-employed persons intending to come to Tanzania for investment purposes.

Work Permit Class B: Available to prescribed professionals including medical and health care professionals, experts in oil & gas, teachers and university lecturers in the fields of science and mathematics.

Work Permit Class C: Available to non – citizens of other professions.

Work Permit Class D: Available to non- citizens who wish to engage in approved religious and charitable activities.

Work Permit Class E: Available to refugees.

All work permits (with the exception of the Class A category work permit for investors) are typically valid for a period of twenty-four (24) months from the date of issuance and can be renewed for a maximum period of five (5) years. Class A category work permit for investors can be issued for ten (10) years or more.

Note 2: The Labour Commissioner is also empowered to issue a Certificate of Exemption to a non-citizen exempting him or her from the application of the above permits.

Other Visas:

The government of Tanzania makes available five (5) categories of visas to eligible foreigners:

Ordinary Visa: This visa is available to eligible who wish to enter Tanzania for the purpose of leisure, holiday, business, health treatment, studies, or any other activity legally recognized by the laws of Tanzania. The ordinary visa is a single entry visa that is valid for up to three (3) months.

Transit Visa: This visa is issued to eligible foreigners who wish to pass through Tanzania en route to other destinations. The visas permits entry to Tanzania for up to fourteen (14) days. Successful Transit Visa applicants are able to provide onward tickets, sufficient funds for subsistence while in Tanzania, and an entry visa or proof of entry eligibility to the country of next destination.

Multiple Entry Visa: This is a business visa that is issued to visa nationals who need to make frequent visits to Tanzania. Multiple Entry Visas may be issued for a period of three (3), six (6) or twelve (12) months and permit the holder to enter and re-enter into Tanzania during the validity period of the visa. Muliple Entry Visa holders must limit their stays in Tanzania to three (3) months per entry.

Gratis Visa: This visa is granted to holders of Diplomatic or Official/Service Passports who travel to Tanzania on official missions. It is called a Gratis Visa because it is granted free of charge. In some cases, Gratis Visa may be granted to holders of Ordinary Passports where an exemption has been given by the Immigration Services Department.

Business Visa: Business Visas are issued to visa nationals for a period not exceeding ninety (90) days. Business Visa holders are permitted to conduct legitimate business under the laws Tanzania. Legitimate business includes participation in audit assignments; fixing/repairing machines; and conducting specialised training.

Note 1:

Immigration officers at points of entry into Tanzania have the right to refuse entry to any individual regardless whether s/he holds a valid visa, if the officer has doubts about the foreigner’s ability to fulfil immigration requirements and/or believes that the visa holder's presence in Tanzania would be contrary to its national interests.

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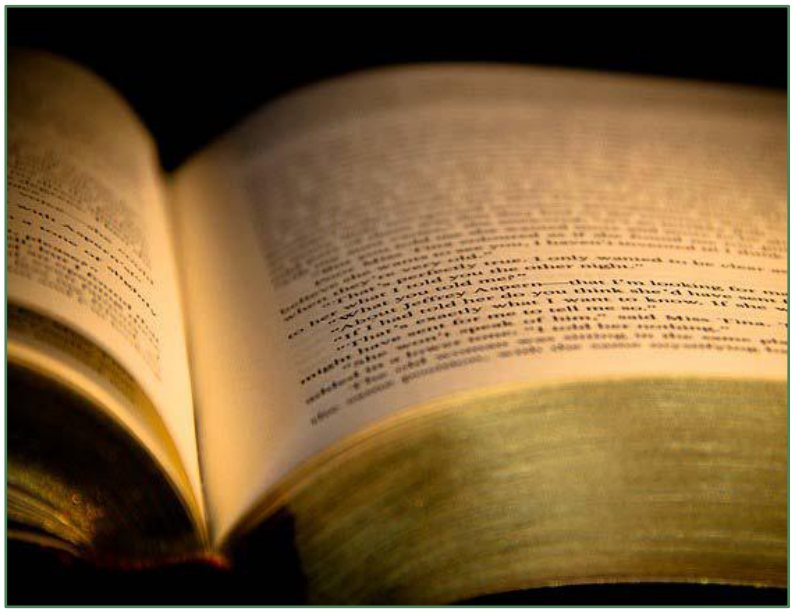
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