



# TO WHAT EXTENT CAN IMMIGRATION PRACTITIONERS ETHICALLY RELY ON CHATGPT TO AID THEIR PRACTICE?

*Posted on September 5, 2023 by Cyrus Mehta*

To what extent can ChatGPT assist immigration lawyers in their immigration practice? What are the ethical pitfalls if a lawyer relies on ChatGPT?

There is one case that was widely publicized all over the world In [Mata v. Avianca Inc.](#), Judge Castel in the Southern District of New York sanctioned two New York lawyers and their law firm for \$5000 for submitting a brief citing fake cases generated by ChatGPT. The brief was submitted in opposition to a motion to dismiss by Avianca Airlines after Roberto Mata sued the airline for incurring an injury during a flight to JFK, New York. The 10-page brief cited more than half a dozen relevant court decisions such as *Martinez v. Delta Air Lines*, *Zicherman v. Korean Air Lines* and, *Varghese v. China Southern Airlines*, with a learned discussion of federal law and “the tolling effect of the automatic stay on a statute of limitations.” None of these cases existed and were made up by ChatGPT. Judge Castel pointed out that “ shows stylistic and reasoning flaws that do not generally appear in decisions issued by United States Courts of Appeals. Its legal analysis is gibberish.” Judge Castel further noted that he would not have sanctioned the attorneys if they had immediately come clean when confronted with the fake cases generated by ChatGPT. Instead the lawyers “doubled down and did not begin to dribble out the truth” for a month and a half after the cases were brought to the court’s attention. Rather than accept an apology from the lawyers, in addition to the \$5000 fine, Judge Castel ordered that the lawyers inform their client and the judges whose names were wrongfully invoked of the sanctions imposed.

If a brief with made up cases and citations generated by ChatGPT is submitted in Immigration Court or with the USCIS, EOIR and DHS Disciplinary Counsel can

impose sanctions under the disciplinary grounds articulated in 8 CFR 1003.102. For instance, a practitioner can be sanctioned for knowingly or with reckless disregard making false statements under 8 CFR 1003.102(c), engaging in frivolous behavior under 8 CFR 1003.102(j), engaging in conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process under 8 CFR 1003.102(n), failing to provide competent representation under 8 CFR 1003.102(o), failing to act with reasonable diligence and promptness under 8 CFR 1003.102(q) or repeatedly filing briefs and other pleadings that reflect little or no attention to the specific factual or legal issues applicable to a client's case, but rather relying on boilerplate language under 8 CFR 1003.102(u). Of course, state bar disciplinary authorities where the lawyer is admitted can also start an investigation under that state's analogous rules governing the professional conduct of attorneys and impose discipline.

Even before the advent of ChatGPT, lawyers have been disciplined for filing inaccurate or sloppy briefs. For instances, in [Coboy v. US Small Business Administration](#), 992 F.3d 153 (3d Cir 2021), the court sanctioned a lawyer for a sloppy cut and paste job. "The relevant extract from the Third Circuit's holding is worth noting:

*It's not easy to become a lawyer. The practice of law is challenging, and even the best lawyers make mistakes from time to time. So we err on the side of leniency toward the bar in close cases. But the copy-and-paste jobs before us reflect a dereliction of duty, not an honest mistake.*

This does not mean that the lawyer should completely shun AI technology in their practice. The lawyer could use an AI generated response as the starting point but should not be taking for granted that ChatGPT will always be accurate. In an [ABA practice advisory](#), "Future Proofing: A Present Look at ChatGPT in Your Future" by Dan Pinnington and Reid Trautz, the authors provide the example of how an immigration lawyer has been testing ChatGPT for his busy practice:

*Miami immigration lawyer Michael Harris has been testing ChatGPT for his busy practice by seeing how it could write analytical essays or letters typically used in his practice. Harris reports that he immediately was impressed that it could write detailed letters with the same type of*

*instruction he would give a paralegal or associate lawyer. "If the draft had weaknesses, I would refine my instruction and the AI was able to further adjust. I don't think ChatGPT can yet write a complex memorandum of law, but it can help draft detailed fact statements when given the right in put prompts.*

In an [AILA advisory](#), "What is ChatCPT and Why Does It Matter to Immigration Lawyers?" by Michele Carney, the author provides this valuable insight on how ChatGPT might be able to assist the immigration lawyer:

*Think of ChatGPT as a blank piece of paper that can populate ideas. ChatGPT can get the ball rolling on ideas as it uses a predictive model, and the more information the lawyer inserts into the query, the more responsive the answer will be. The lawyer can get several responses from ChatGPT, and then perhaps the writer's block will be lifted, and the lawyer will have a springboard from which to draft a document.*

I asked ChatGPT to see whether it could help me draft a letter in support of an O-1B for an Indian chef. This was my question:

*Can you assist me in drafting a letter in support of an O-1B petition for a prospective chef of an Indian restaurant in New York who has gained acclaim in India for his innovations in Mughlai and Dum pukht cuisine. Please also provide some background on the origins of Mughlai and Dum pukht cuisine.*

This was ChatGPT's response:

*Certainly, here's a letter in support of an O-1B petition for a prospective chef specializing in Mughlai and Dum Pukt cuisine, along with some background on the origins of these cuisines:*

*Re: O-1B Visa Petition for*

*Dear Sir/Madam,*

*I am writing to wholeheartedly support the O-1B visa petition on behalf of , an extraordinarily talented chef from India, whose culinary prowess and*

*innovative contributions to Mughlai and Dum Pukt cuisine have earned him accolades and acclaim in his home country.*

*Mughlai Cuisine, originating during the Mughal Empire's reign in India, represents a culinary tradition characterized by its opulent flavors, aromatic spices, and meticulous preparation methods. This culinary heritage is a testament to the grandeur and refinement of the Mughal courts. Mughlai cuisine is celebrated for its use of cream, yogurt, and an array of spices, resulting in dishes of unparalleled richness and taste. The hallmark of Mughlai cuisine lies in its ability to transform ordinary ingredients into extraordinary culinary masterpieces.*

*Dum Pukt Cuisine, another gem in the treasure trove of Indian gastronomy, emerged from the royal kitchens of the Mughal emperors. The term "Dum" translates to "breath" in Persian, symbolizing the slow, luxurious breath that food takes as it is carefully slow-cooked in a sealed container. This technique allows flavors to meld and intensify, resulting in dishes of exquisite depth and complexity. Dum Pukt cuisine is a living testament to the legacy of generations of chefs who have preserved and perfected this timeless culinary art.*

*has not only embraced these culinary traditions but has also elevated them to new heights through his innovative techniques and creations. His culinary journey reflects a profound understanding of the roots and history of Indian cuisine, coupled with a relentless passion for pushing the boundaries of flavor and presentation.*

*His achievements include:*

- 1. Innovative Culinary Creations:** *consistently pushes the boundaries of traditional Mughlai and Dum Pukt cuisine, reimagining classic dishes with contemporary twists that have captivated diners and critics alike.*
- 2. Acclaim in India:** *He has received widespread recognition in India, earning accolades and awards for his culinary innovations.*
- 3. Cultural Ambassador:** *Through his culinary artistry, has effectively served as a cultural ambassador, promoting Indian cuisine and traditions both domestically and internationally.*
- 4. Mentorship:** *He has mentored and trained aspiring chefs, ensuring the preservation and continued evolution of these culinary*

*traditions.*

*Enclosed with this letter, you will find the necessary documentation, including letters of support from renowned culinary experts, evidence of 's significant contributions to the culinary industry, and proof of his acclaim in India.*

*We kindly request that you consider this petition favorably and grant the O-1B visa, which will allow him to bring his extraordinary talents and culinary innovations to our restaurant in New York, enriching our city's culinary landscape and further enhancing cultural exchange.*

*Thank you for your attention to this matter, and we look forward to the possibility of welcoming to the United States.*

*Sincerely,*

If the practitioner submits this letter by filling in the blanks, he or she will likely not be providing competent and diligent representation. If this is going to be the main letter in support of the O-1B petition, it does not set forth the evidentiary criteria for proving distinction in the arts under 8 CFR 214.2(o)(3)(iv) and how this chef may meet three out of the six evidentiary criteria. This AI generated draft should only serve as the opening for a more detailed letter pertaining to how the chef can qualify for O-1B classification, and it would require more research and investigation about the chef's acclaim and achievements in Mughlai and Dum pukht cuisine. I give credit to ChatGPT that it gave me some idea of Mughlai and Dum pukht cuisine although note that ChatGPT spelt it as Dum pukt rather than Dum pukht, which is how I spelt it. Perhaps, this AI generated letter might be more suitable as a sample template from a peer of the chef who writes a recommendation rather than the main letter brief summarizing the evidence and establishing how the chef meets the chef meets the O-1B visa standards. If a paralegal is relying on ChatGPT to draft a letter in support of an O-1B petition, it would behoove the lawyer to supervise the paralegal and ensure that the paralegal is not solely relying on a document generated by ChatGPT. If the practitioner carelessly submits the letter as is without even filling out the blanks, it would be tantamount to a frivolous filing.

The lawyer should also be aware that ChatGPT can hallucinate and generate gibberish as it did in *Mata v. Avianca*.

While a document generated by AI could potentially lift writer's block, it should only be the starting point for the lawyer to further investigate the facts and research the law. Submitting a letter generated by ChatGPT without further reworking could potentially result in sanctions for the lawyer under the disciplinary grounds in 8 CFR 1003.102 and under the relevant state bar rules of professional conduct. Even if the lawyer escapes sanctions, the USCIS may be able to detect that the letter was generated by AI and may not give it the same weight.

A final word on confidentiality. There is concern that the data of a client provided to ChatGPT will not be anonymized and kept confidential, and may thus violate ABA Model Rule 1.6. However, when I asked ChatGPT this question, this was its answer:

*Yes, I can assure you that any information you provide, including the date of a client for an O-1B petition, will be kept confidential and anonymized. I don't have the capability to store or recall personal data from one interaction to the next, and I am designed to respect user privacy and confidentiality. Your data and questions are not stored or used for any purpose beyond the current conversation. Your privacy and the security of your information are of utmost importance. If you have any concerns about privacy or data security, please feel free to let me know, and I'll do my best to address them.*

Notwithstanding ChatGPT's assurance of maintaining confidentiality, I would still get the consent of the client if I might provide their data to ChatGPT in the hope of generating a more specific letter in support of the O-1B petition.

As final experiment, I gave ChatGPT data about [Marcus Samuelsson](#) who is an Ethiopian-born Swedish-American celebrity chef and is not my client. Nor is the Aquavit restaurant my client. Perhaps, ChatGPT could provide a better letter if I gave it more specific information about a particular public figure like Mr. Samuelsson and the restaurant that would sponsor him. I asked the following question:

*Assuming that Marcus Samuelsson will hypothetically apply for an O-1B*

*visa, please draft the letter in support of the O-1B petition that Aquavit will file on his behalf demonstrating that he meets the evidentiary standards under 8 CFR 214.2(o)(3)(iv)*

This is how ChatGPT responded:

*Your Name] Aquavit Restaurant*

*U.S. Citizenship and Immigration Services*

*Re: O-1B Visa Petition for Marcus Samuelsson*

*Dear Sir/Madam,*

*I am writing this letter in support of the O-1B visa petition on behalf of Mr. Marcus Samuelsson, a renowned chef and culinary artist, who we are proud to have as a valuable member of our team at Aquavit Restaurant. We firmly believe that Mr. Samuelsson meets and exceeds the evidentiary standards outlined in 8 CFR 214.2(o)(3)(iv) for an O-1B visa, and we are enthusiastic about his continued contributions to the culinary world in the United States.*

*Mr. Samuelsson's exceptional achievements in the field of culinary arts have earned him national and international acclaim. He has demonstrated extraordinary ability and expertise in his craft, distinguishing himself as a culinary innovator and influencer. His contributions to our restaurant and the broader culinary community have been nothing short of remarkable.*

*To meet the regulatory criteria for the O-1B visa, Mr. Samuelsson can provide the following evidence:*

*1. Awards and Recognitions:*

- Samuelsson has received numerous prestigious awards and accolades throughout his career, including multiple James Beard Awards, Michelin stars, and recognition in the culinary industry's most respected publications.*

*2. Critical Acclaim:*

- His culinary creations have consistently garnered critical*

*acclaim, with glowing reviews from renowned food critics and journalists.*

*3. Expert Appearances:*

- Samuelsson has been invited to participate as a guest judge on top culinary television shows, further demonstrating his prominence in the field.*

*4. Original Contributions:*

- He has made significant original contributions to the culinary arts, introducing innovative techniques, flavors, and concepts that have influenced the industry.*

*5. International Standing:*

- His influence extends beyond national borders, as he has represented the United States on the global culinary stage and has been invited to collaborate with chefs from various countries.*

*6. Industry Leadership:*

- Samuelsson is recognized as a leader in the culinary world and has served as an inspiration to emerging chefs, mentoring and supporting them in their careers.*

*7. Prominent Partnerships:*

- His collaborations with leading culinary institutions, world-famous restaurants, and renowned chefs have solidified his status as a prominent figure in the culinary world.*

*We believe that Mr. Samuelsson's achievements, expertise, and contributions to the culinary arts unquestionably meet the criteria set forth in 8 CFR 214.2(o)(3)(iv) for the O-1B visa. We are confident that his continued presence in the United States will enhance our culinary landscape, further promote cultural exchange, and inspire aspiring chefs.*

*We respectfully request that you grant Mr. Samuelsson the O-1B visa, allowing him to continue sharing his extraordinary talents with the American public and contributing to our vibrant culinary scene. We appreciate your time and attention to this matter and are prepared to provide any additional documentation or information that may be required to support this petition.*

*Thank you for considering Mr. Samuelsson's O-1B visa application. If you*



*have any questions or need further information, please do not hesitate to contact me at .*

*Sincerely,*

*Aquavit Restaurant*

The letter that ChatGPT generated did not meet my standards. It was still canned and used the same verbiage from the letter that it gave me for the Indian chef who specialized in Mughlai and Dum pukht cuisine. The letter was lacking in detail about Mr. Samuelsson's achievements, which are widely accessible on the internet. A lawyer who is required to provide competent and diligent representation needs to substantially rework and rewrite an AI generated letter if it will be used in support of an O-1B petition.