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The Immigration Newsletter

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DO YOU FEEL LUCKY?: A SIMPLE, INEXPENSIVE, AND QUICK WAY TO OBTAIN A GREEN CARD

The U.S. Congress created the **Diversity Visa Lottery Program** to diversify the population of the U.S. and to allow people from different parts of the world to become Lawful Permanent Residents. Each year a total of 50,000 visas are available to nationals/citizens from the entire world except for 19 countries that are excluded from participating. Applicants, spouses, and children under 21 years of age can be included in the application. To participate in the lottery, the applicant must meet the following requirements:

1. Be a national of a country that qualifies for the drawing. In most cases the applicant must have been born within a qualifying country. However, there are two exceptions to the rule and extend eligibility based on the spouse and parents of an applicant. Almost all countries qualify, except for Brazil, Canada, China (mainland-born), Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, India, Jamaica, Mexico, Pakistan, Philippines, Peru, Poland, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam.
2. Education or work experience. The applicant must have either a high school education OR two years of work experience within the past five years in an occupation requiring at least two years of training or experience in order to perform.

Applications for the 2011 Diversity Visa Lottery Program will be accepted by the Department of State from October 2, 2009 to November 30, 2009. The Law Offices of Adan G. Vega & Associates, PLLC can help you in submitting your application on a timely basis.

In this issue:

- **Diversity Visa Lottery Program**
- **Did You Know That...?**
- **Recent Cases**
- **Latest News**
- **Myths and Truths**
- **Judicial Decisions**

1979 - 2009

30

YEARS OF
 EXCELLENCE

Adan G. Vega & Associates, PLLC

DID YOU KNOW THAT ...?

Worksite inspections by Immigration and Control Enforcement (ICE) are becoming a common occurrence.

After many years of being ignored, the Fraud and Prevention Fee for H-1B applications is being used to fund these inspections. Inspections are also becoming common-place for employment-based LPR applications that are in process.

Our office can help you be prepared for potential worksite inspections and handle the after effects of an inspection so you can keep your business running.

THE CONCLUSION OF THE ODYSSEY OF MR. G – THE SWORD OF DAMOCLES IS FINALLY LIFTED

Finally, after contesting the Citizenship and Immigration Service's (CIS) efforts to deport Mr. G for over ten (10) years, Mr. G wins in Immigration Court and is able to remain in the U.S. as a lawful permanent resident (LPR). Mr. G first became an LPR in 1985. In 1998, Mr. G was issued a Notice to Appear (NTA) before the Immigration Judge. The CIS alleged that Mr. G committed several criminal offenses, including theft of an automobile in 1989, and aiding and abetting two (2) aliens to enter the U.S. illegally in 1986. The Immigration Judge held that Mr. G was deportable because the offense of theft of an automobile was a Crime of Moral Turpitude (CIMT). In 1999, we presented Mr. G's case for Cancellation of Removal and Voluntary Departure before the Immigration Court. The Immigration Judge denied Mr. G's request for Cancellation of Removal and Voluntary Departure because of Mr. G's theft offense. We subsequently submitted an appeal to the Board of Immigration Appeals (BIA).

In 2002, the BIA remanded the case back to the Immigration Court to allow Mr. G to file for a 212(c) waiver pursuant to the Supreme Court's ruling in *St. Cyr*. However, the CIS added a charge of domestic violence to Mr. G's NTA. In 2003, the Immigration Judge found that Mr. G was also removable based on the domestic violence offense, a Class C Misdemeanor that Mr. G pled guilty to in 1998. In addition, the Immigration Judge held that Mr. G's domestic violence charge could not be waived and ordered Mr. G removed for a second time. We appealed to the BIA and the BIA affirmed the Immigration Judge's decision without an opinion.

In 2004, our law offices petitioned the Fifth Circuit Court of Appeals on behalf of Mr. G. We argued that a Texas Class C Misdemeanor Assault is not a crime of violence and, consequently, should not be considered a domestic violence removability charge under immigration law. The Fifth Circuit agreed and remanded the case to the BIA with instructions to remand the case to the Immigration Judge to allow Mr. G to apply for the 212(c) waiver. On March 10, 2009, more than ten (10) years after the CIS issued the first NTA, we presented Mr. G's 212(c) waiver case before the Immigration Judge. After hearing from five (5) of thirteen (13) witnesses, the Immigration Judge determined that no additional testimony was necessary. The Immigration Judge granted Mr. G's 212(c) waiver. The imminent and ever-present peril that Mr. G suffered for 10 years was his Sword of Damocles that was eventually and finally lifted.

RECENT CASES REPRESENTED BY OUR OFFICE

- **Immigration Court:** Mr. B was granted lawful permanent residency (LPR) status before the Immigration Judge on March 3, 2009 through marriage to a U.S. citizen despite the fact that Mr. B had pled guilty in 2002 to Assault Causing Bodily Injury to a Family Member, a Texas Class A Misdemeanor. The Citizenship and Immigration Services (CIS) considers a Class A Misdemeanor for domestic violence as a Crime of Moral Turpitude, thereby making an alien inadmissible for permanent residency. However, in order to preempt a claim by the CIS that Mr. B committed a Crime Involving Moral Turpitude, our law office worked with a criminal attorney and had the conviction set aside, clearing the way for Mr. B to adjust his status before the Immigration Judge.
- **Immigration Court:** Mrs. M was granted Cancellation of Removal before the Immigration Judge on August 28, 2009 by showing exceptional and extremely unusual hardship to her LPR husband and four (4) U.S. citizen children. We presented evidence that Mrs. M was very close to her immediate family and would be unable to cope without them. Mrs. M was previously subject to the ten (10) year bar and unable to adjust status with her husband.

LATEST NEWS

- U.S. Citizenship and Immigration Services (USCIS) announced that more notices of **inspection** were issued at worksites during one (1) week in July 2009 than in all of 2007.
- According to USCIS, nearly 33% of **Violence Against Women Act (VAWA)** self-petitions were denied during Fiscal Year 2008.
- The Vermont Service Center has a **VAWA hotline:** (802) 527-4888. An e-mail address (ThomasPearl@dhs.gov) can be used only after calling the hotline.
- USCIS announced in June that applicants may experience up to an eight (8) week delay in the delivery of their **permanent resident cards**. Approved applicants can receive an I-551 stamp as temporary evidence of their permanent resident status.
- USCIS expanded the Premium Processing Service for certain types of **Form I-140s** to include alien beneficiaries who have reached, or are reaching, their limitation of stay in H-1B nonimmigrant status.

- During FY 2008, of more than 6,000 **arrests** related to worksite enforcement, only 135 were employers.
- Nearly 70% of all **I-601 waivers** filed at the U.S. Consulate in Ciudad Juarez, Mexico are denied.
- Federal contractors are required to use **E-Verify** as of September 08, 2009.
- USCIS announced in September 2009 that interim **Employment Authorization Documents (EADs)** will be issued to Salvadoran **Temporary Protected Status (TPS)** beneficiaries who have not yet received a final action on their re-registration applications and whose re-registration applications have been pending for more than 90 days.
- 31% of 31,452 **asylum applications** were granted by asylum officers in FY 2008.
- The Houston USCIS office is processing **Naturalization Applications** in five (5) months as of July 31, 2009.

MYTHS AND TRUTHS

It is a *myth* that a signature on the G-28 by a client authorizes the attorney/representative to sign documents on behalf of the client.

It is a *fact* that failure to pay income taxes can result in the denial of a naturalization application.

It is a *myth* that being separated in Mexico for more than two (2) years means that the spouse is automatically divorced. A divorce in Mexico requires a decision either by a judge or by a specific public official.

It is a *fact* that if you marry in Mexico in a religious ceremony and a civil ceremony is *not* conducted and recorded with the government authorities, the couple may be considered unmarried for immigration purposes.

JUDICIAL DECISIONS

- The U.S. Court of Appeals for the Second Circuit held that the Department of Homeland Security is barred from adjudicating a naturalization application while removal proceedings are pending. *Perriello v. Napolitano*, 09/01/09.
- Federal courts in Florida, Maryland, Missouri, and Texas have found in particular cases that despite the death of a U.S. Citizen I-130 petitioner prior to adjudication on the merits of the I-130, USCIS had no basis to revoke or terminate the petition for classification as an immediate relative.
- A tool for deportation has been eliminated. On May 4, 2009 the Supreme Court reversed lower courts and held that a conviction of *Aggravated Identity Theft* requires that an individual must have knowledge that the means of identification used or transferred belongs to another person. *Flores-Figueroa v. United States*, 5/04/09.
- The Fifth Circuit has held that guest workers are entitled to Fair Labor Standards Act (FLSA) protection, but that the employer is not required to reimburse its guest workers for the recruitment fees, transportation costs, or visa fees that they incurred to work in the U.S. *Castellanos-Contreras v. Decatur Hotels LLC*, 7/21/09.