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The Immigration Newsletter

**January - March 2010
Issue 5**

"WIDOW PENALTY" ABOLISHED: New Hope for Widows and Widowers

For many years widow(er)s were unfairly prevented from petitioning for Lawful Permanent Resident (LPR) status if their spouses died before they had been married for two (2) years. The "Widow Penalty" law left many widow(er)s without legal status in the United States, forcing them to return to their home countries or remain in the U.S. in unlawful status. However, effective October 28, 2009 the "Widow Penalty" has been set aside.

The new law allows for a widow(er) and his or her children to file for LPR status within two (2) years of the date of death of the U.S. citizen spouse, as long as the widow(er) has not remarried. For widow(er)s whose spouses died prior to October 28, 2009, they have until October 28, 2011 to file for adjustment of status with USCIS. USCIS will not be sending any notice to these widow(er)s that the clock is ticking against them.

In the event that a previously pending petition was closed or denied by USCIS due to the death of a U.S. citizen spouse, we can potentially revive that petition and allow the widow(er) to apply for LPR status, as long as it is filed before October 28, 2011.

If you or someone you know is potentially affected by this monumental change in the law, please contact our office at 1(888)7-ADANVEGA for more information.

In this issue:

- **Widow Penalty Abolished**
- **Did you know that...?**
- **Recent Cases Represented by our Office**
- **Judicial Decisions**
- **Latest News**
- **Myths and Truths**

1979 - 2010

31

YEARS OF
EXCELLENCE

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DID YOU KNOW THAT ...?

- Every year 10,000 EB-5 visas are available to immigrants who invest at least \$500,000.00 in an American business that creates 10 jobs.
- Domestic violence victims can petition USCIS for eligibility to acquire a classification that can eventually lead to permanent resident status under the Violence Against Women Act (VAWA).
- A permanent resident who served in the US military for at least one day during time of hostilities, includes activities in Iraq and Afghanistan, can acquire citizenship.

RECENT CASES REPRESENTED BY OUR OFFICE

- We arranged for a Venezuelan man to be naturalized before a federal judge in a private ceremony days after his naturalization interview, so he could petition for his son who was about to turn 21 years of age in 10 days time.
- A National Interest Waiver for a Norwegian Petroleum Engineer has been approved by USCIS. This individual, who works for one of the biggest oil companies in the US, obtained Lawful Permanent Residency by demonstrating that he has extraordinary abilities.
- A student from Thailand was able to get reinstated as a student after USCIS denied her status for dropping out from school.
- The following permanent labor certifications have been approved by the Department of Labor:
 - "Financial Advisor" with a master's degree in Business Administration obtained in Mexico
 - "Cook in Private Home" with two (2) years of previous experience in Venezuela
 - "Operations and Business Analyst" with a Bachelor's in Business Administration obtained by a Malaysian and five (5) years of previous experience as Sales Manager
 - "Cosmetologist" with two (2) years of previous experience from Mexico
 - "Combustion Turbine Component Repair Specialist" with two (2) years of previous experience
 - "Grind & Polish Worker" with five (5) months of previous experience

JUDICIAL DECISIONS

- The Fifth Circuit vacated a removal order and reversed its prior decision that unauthorized use of a vehicle (UUV) under Texas law is a crime of violence. The court found that UUV has no essential element of violent or aggressive conduct. *Serna-Guerra v. Holder* (2009).
- The Fifth Circuit ruled that a petitioner's parents' knowledge of his or her inadmissibility is imputed to the petitioner regardless of the fact that the petitioner was a minor at the time of the parent's fraud in the naturalization process. *Mushtaq v. Holder*, 09/23/09.
- In *Kucana v. Holder* (2010), the U.S. Supreme Court ruled that individuals who seek to reopen their deportation orders have the right to appeal to the federal courts if the immigration court refuses to hear the appeal.

LATEST NEWS

General

- USCIS offers **Temporary Protected Status to Haitians** who are present in the United States since January 12, 2010.
- As of November 25, 2009 the U.S. is part of a **biometric data sharing** initiative with Canada, Australia, and the United Kingdom.
- ICE announced that it would no longer detain **asylum seekers** if they can prove their identities, that they are not dangerous or a flight risk, and have a credible fear of persecution or torture in their home countries.
- USCIS has released a brochure in English and Spanish to assist people from becoming victims of **immigration fraud**.
- The Department of State (DOS) announced that by April 30, 2010 all **nonimmigrant visa applicants** processed at a consulate will have to electronically file their Form DS-160.
- The Justice Department released a new video describing the types of **discrimination prohibited** and how employers can avoid discriminatory practices.
- USCIS no longer requires applicants for Adjustment of Status to receive **vaccinations** against Human Papillomavirus (HPV) and herpes zoster (zoster).

Business

- Effective January 01, 2010 the Department of Labor (DOL) will now handle all **prevailing wage requests**.
- The **EB-5 Pilot Program** was extended to September 30, 2012 by DHS Appropriations Act of 2010.
- During FY2009, USCIS approved nearly 94% of **EB-5 visa applications**.
- USCIS announced the **H-1B cap** for FY2010 was reached on December 21, 2009.
- USCIS plans to conduct 25,000 **on-site inspections** of companies hiring foreign workers during FY2010.

Court

- In its upcoming term, the U.S. Supreme Court will decide whether a second drug possession conviction qualifies as an **aggravated felony** under the INA in *Carachurri-Rosendo v. Holder*.
- The U.S. Supreme Court officially made reference to "**undocumented immigrant**," rather than "illegal alien" in *Mohawk Industries, Inc. v. Carpenter* (Dec. 08, 2009).

Statistics

- In 2009 over 400 people died while trying to sneak across the **Mexican border**.

- U.S. **repatriates** more than 1,700 Mexicans daily.
- In 2009 the number of defendants charged with **immigration crimes**, mostly relating to improper re-entry by immigrants or the misuse of visas and entry permits, rose 19 percent, to 26,961.
- A record **670,000 foreign students** are studying in the United States. Most come from China and India.
- CBP has completed **636 miles** of fencing along the southwest border.
- Department of Homeland Security (DHS) received \$2.75 billion to stimulate the economy under the **American Recovery and Relief Act**.

MYTHS AND TRUTHS

It is a *myth* that a "green card" replaces the need for a passport when traveling.

It is a *fact* that nearly 31.5% of all Customs and Border Protection (CBP) employees are Hispanic.

It is a *myth* that notarios are attorneys in the United States.

It is a *fact* that immigration medical examinations must be performed by a USCIS approved civil surgeon.

It is a *myth* that a Texas adoption establishes that a child is a U.S. citizen. The adoption only establishes the legal parent-child relationship.