

COMMUNITY

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The widow penalty

YOUR IMMIGRATION SOLUTION



ATTY. ROBERT REEVES & ANTHONY J. FAVERO

(I-130) has not been adjudicated by the United States Citizenship and Immigration Services (USCIS) or (2) if no visa petition was ever filed. This phenomenon is known as the "widow penalty."

So, what is the best approach for an immigrant in this horrible position? The answer to this question largely depends on where he or she lives. If the immigrant lives within the geographical limits of the First, Sixth, or Ninth Circuits, he or she is currently protected by recent federal court decisions holding that a visa petitioner's death does not end a surviving spouse's eligibility for classification as an "immediate rela-

be eligible for humanitarian reinstatement of their approved petition. If this request is approved, the spouse may apply for adjustment of status.

Alternatively, if a visa petition or application to adjust status was pending at the time of the citizen's death and the couple was married for less than two years, the alien may request deferred action on his or her application. Similarly, those individuals who have had visa petitions denied due to the death of their US citizen spouse or who have not filed a visa petition prior to the death of their citizen spouse are eligible to apply for deferred action. Applications for deferred action require the filing of a specially formatted petition along with extensive documentary evidence and legal briefing. If deferred action is granted, the alien becomes eligible to live and work in the US for two years after the date of approval.

Those who lose a spouse suffer an incalculable loss. Unfortunately, the government's harsh interpretation of our immigration laws makes the death of a spouse even tougher on immigrant spouses of US citizens. As seen above, the law in this area is complex and unsettled. If you, a family member, or a friend fears becoming a victim of the "widow penalty," we encourage you to seek the assistance of an experienced immigration attorney.

Atty. Reeves has represented clients in numerous landmark immigration cases that have set new policies regarding INS action and immigrants' rights. His offices are located in Pasadena, San Francisco, Las Vegas and Makati City.
Telephone: (800) 795-8009
E-mail: immigration@rreeves.com
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The analysis and suggestions offered in this column do not create a lawyer-client relationship and are not a substitute for the personalized representation that is essential to every case. (Advertising Supplement)

A SPOUSE'S death is an unspeakable tragedy for the grieving widow or widower. However, surviving immigrant spouses can face legal problems in addition to the grief of losing a close family member.

A common fact pattern involves an individual who enters the United States under a fiancé visa ("K-1") and marries his or her US citizen spouse. At this point, the individual has become an "immediate relative" of the US citizen and is eligible to file for a Green Card (adjustment of status). Once an application is filed and approved, the individual becomes a conditional permanent resident. Within the 90 day period prior to the expiration of the conditional Green Card, a conditional resident can file a petition to remove the conditions thereby obtaining a permanent Green Card. But, what happens if the individual's US citizen spouse dies during the two-year conditional residence period or while the Green Card Application is pending?

Unfortunately, Federal Regulations require the revocation of an approved visa petition upon the death of the citizen petitioner if the beneficiary has not been granted a Green Card or Immigrant Visa. Consequently, under the government's current interpretation of immigration law, a conditional permanent resident faces deportation from the United States when his or her US citizen spouse dies within two years of their marriage if (1) their immigrant visa petition

"Federal Regulations require the revocation of an approved visa petition upon the death of the citizen petitioner if the beneficiary has not been granted a Green Card or Immigrant Visa."

tive" (defined, in this case, as a US citizen's spouse). As such, USCIS should approve visa petitions and adjudicate applications filed on behalf of spouses of US citizens who reside in the First, Sixth, or Ninth Circuit regardless if the citizen petitioner passed away before the petition or application was filed. It is important to note that the aforementioned decisions apply only to cases involving visa petitions filed for the spouses of citizens. Consequently, these cases do not apply to visa petitions filed for a citizen's step-child.

If neither the US citizen petitioner nor the alien beneficiary resided in the First, Sixth, or Ninth Circuits at the time of the citizen petitioner's death, a number of options remain. If an immigrant visa petition was approved prior to the US citizen's death, the surviving spouse may

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