

DEBT RELIEF



ATTY. LAWRENCE YANG

A BANKRUPTCY petition filed under one chapter of the bankruptcy code may be converted into a petition under a different chapter of the code. The debtor himself can request the conversion, or the court itself by its own motion or the US Trustee or the trustee administering the bankruptcy estate, or any interested party may move to have a case converted to a different chapter of the code. § 706 states that the debtor may convert a case under chapter 7 to a case under chapter 11, 12, or 13 at any time, if the case has not been previously converted under § 1112, 1208, or 1307. Debtor's right to convert case is almost absolute if there has been no prior conversion. However, there have been cases where the court has denied debtor the right to convert where debtor has been found to be in bad faith. Hence, the right to convert is not 100% bullet-proof. But a debtor who has filed his original case in good faith should not see any obstacle to converting case if he so chooses as long as no prior conversions have occurred.

Several years ago, client spouse came to see me saying that she had filed a joint chapter 7 case with her husband

Converting bankruptcy cases

who was currently incarcerated. Husband was a chiropractor who was snagged by a sting operation of the district attorney's office involving fraudulent car accident claims. Since husband was in jail, the household could no longer pay debts and debtors decided to file chapter 7. The problem was that while debtor was in jail, debtors were unaware of the fact that the market value of their residence had risen substantially, creating a significant amount of non-exempt equity when they filed their chapter 7 case.

The chapter 7 trustee smelled blood after checking out the current market value of the residence. The nonexempt equity was more than \$100,000 as it turned out, so the trustee filed a motion to sell the residence.

After interviewing debtor's wife, I found out that her husband had no idea what the fair market value of their residence was because he was still in jail and had been in jail for the last two years. She herself had no idea what the market value was when they filed their chapter 7 case. I also found out that her husband was due to be released on probation in 2 months and his mother, who owned a small manufacturing business, was willing to offer her son a position as sales manager at a \$4,000 monthly salary. Thus, we filed a motion to convert their chapter 7 case into chapter 13. The chapter 7 trustee objected to conversion saying that debtors had no ability to fund a 100% chapter 13 plan because debtor was still in jail

and had no income. The court set the matter for hearing and invited the parties to brief the court as to their respective positions. We were able to submit evidence showing that debtor was about to be released on parole and was in fact about to be transferred to a half way house, that his mother owned a business and that the business was ready to offer debtor a position in the business as sales manager with a gross monthly income of \$4,000, making the 100% plan feasible. Debtors owed about \$100,000 of credit card debt but they were willing to pay that in full over 60 months. The projected monthly net income of the household was short \$1,500 monthly but debtor's mother was willing to help out by contributing that amount to the household so that her son could start life again without losing his house to the chapter 7 trustee. The court requested further evidence, and a second hearing was set.

Finally, the court granted debtor's motion to convert to chapter 13 under § 706. On the other hand, a chapter 13 case may be converted to a chapter 7 case under § 1307 (a). We will discuss this next week.

Lawrence Bautista Yang specializes in bankruptcy, business, real estate and civil litigation and has successfully represented more than five thousand clients in California. Please call Angie, Barbara or Jess at (626) 284-1142 for an appointment at 1000 S. Fremont Ave., Bldg. A-1 Suite 1125 Unit 58, Alhambra, CA 91803.

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PROBLEM SOLVED



ATTY. KELLY O'REILLY

THERE is nothing more important than family, I know this firsthand as I have been blessed with four daughters, a son and a beautiful wife. A big family by today's standards and I wouldn't change a thing. My family means everything to me and I cannot imagine what I would do if I were separated from them for any extended period of time.

As an immigration attorney, I am constantly reminded of the pain of family separation and how the immigration process actually keeps families apart rather than bringing them together. Long processing times, complex paperwork, difficult terms and concepts, proof of relationships, investigations by federal officers coupled with basic bureaucratic delays often result in moms, dads and kids desperately seeking my assistance in bringing their families back together.

Though they come to me with hope they do have doubts as the immigration process can wear an individual down especially one who has not previously dealt with the Department of Homeland Security, the State Department, immigration officers, investigators and embassy staff. Those who traverse this path alone, having no experience, do so at the risk of extending the painful separation. This week was a reminder of that very thought.

On Tuesday I was able to meet the three adopted children of our client Mario Bote who after 5 years of nightmare delays and frustration was finally united with his children. Though the children did not fully understand the pain and heartache Mario went through to get them here they proudly discussed their plans for the future in their new homeland, including obtaining US citizenship. We hugged and silently realized that the ordeal was finally over, closure.

On Wednesday I was able to meet the son of the Fortunado

Immigration and family unification



BOTE FAMILY REUNION. After 5 years of struggle with the US Immigration Service, the Bote family was reunited in the office of Kelly O'Reilly.



FORTUNADO FAMILY REUNION. After years apart the Fortunado family visits Attorney Kelly O'Reilly to thank him for his help in bringing their family together.

family. This couple spent many hours in my office weeping over the unfair treatment of their son by the US Embassy in Manila and the delays caused by their previous legal counsel's incompetence. They too came to me after losing all hope. Now the fight won, they emotionally introduced him as the newest lawful permanent resident of the United States.

We too hugged and felt the warmth and relief of completion, the process finally over.

These success stories bring into focus what can be done if the right immigration professional is in your corner. So much precious time can be wasted and chances of reuniting the family here in the US lost if the path

towards life in the US is done alone or with the help of a friend or non attorney adviser.

Decide now that you will find the funds, research the various attorneys and retain a reputable and successfully immigration professional so you too can feel the bliss of greeting that family member long since parted. Make the choice that will reunify your family and bring closure to your immigration heartache.

Kelly S. O'Reilly is a principal and a founding shareholder in the law firm of Wilner & O'Reilly.

Please contact Kelly S. O'Reilly at (562) 207-6789 or 1-877-7MABUHAY. Wilner & O'Reilly, APLC, is located at 17777 Center Court Drive, Suite 200 Cerritos, CA 90703. Visit www.wilneroreilly.com.

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Employee remedies for overtime...

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for initial violation and \$200 per unpaid employee per subsequent violations)

c) Civil Penalties for Record-Keeping Violations (computed at \$250 per underpaid employee for initial violation and citation and \$1000 per underpaid employee per subsequent citation)

d) Civil Waiting Time Penalties (computed in the same way that statutory waiting time penalties are computed)

4) Attorney's Fees and Costs – If the employee decides to sue the employer for overtime violations, the Labor Code specifically provides employees a basis to recover reasonable attorney's fees and costs. In short, if the employer refuses to pay overtime and the employee sues and wins, the employer will have to pay the employee's attorney's fees and costs as well.

The right to overtime compensation is important. Hence, California law provides ample pro-

tection to employees. However, the proceedings to enforce such a right may require a serious legal battle. Employees who want to pursue an overtime claim are better served by obtaining experienced legal help.

C. Joe Sayas, Jr., Esq. is an experienced trial attorney who has successfully obtained significant results, including several million dollar recoveries for consumers against insurance companies and big business. He is a member of the Million Dollar-Advocates Forum—a prestigious group of trial lawyers whose membership is limited to those who have demonstrated exceptional skill, experience and excellence in advocacy. He has been featured in the cover of Los Angeles Daily Journal's Verdicts and Settlements for his professional accomplishments and recipient of numerous awards from community and media organizations. His litigation practice concentrates in the following areas: serious personal injuries, wrongful death, insurance claims, unfair business practices, wage and hour (overtime) litigation. You can visit his website at www.joesayaslaw.com or contact his office by telephone at (818) 291-0088.

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Nursing shortage should be top...

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based visa." In order to apply for an immigrant visa, the foreign nurse must be sponsored by a US employer, like a hospital. The employer then must enter a lengthy application process before the foreign nurse can become eligible to apply for a visa. The process includes filing an I-140 petition and labor certification with the US Citizenship and Immigration Services (USCIS) office.

Generally, employers seeking to sponsor workers for EB-3 visas also must complete a lengthy application process with the US Department of Labor (DOL) to certify that there is a shortage of US workers for the position and that hiring a foreign worker will not have an adverse effect on the wages or working conditions of US workers.

However, nursing is considered a "Schedule A" occupation. This means that the DOL has pre-certified that there is a documented shortage of nurses and that hiring foreign nurses will not displace or adversely affect US nurses.

The Schedule A designation is supposed to speed up the application process for employers trying to sponsor foreign nurses by allowing them to bypass the DOL process and skip ahead to filing the petition and labor certification with the USCIS. But even with this designation, it still takes the USCIS an estimated 15 months to process an I-140 Immigrant Visa Petition for a Schedule A nurse.

The biggest barrier, however, to bringing more foreign nurses to work in the US is not the application processing time, but how long it takes after the application has been processed until a nurse receives a visa.

Once the USCIS has approved the application for the foreign nurse, the nurse then is given a priority date and placed in line for a visa with all of the other approved EB-3 applicants. The current wait time for an available EB-3 visa number is 3-7 years. So this means that hospitals who filed successful petitions for foreign nurses as far back as 2002 still may be waiting for the nurse to begin work. Once the visa number becomes available, then the foreign nurse must either apply for a visa at the US consulate or embassy in

his or her home country. If the nurse currently is in the US on a different type of visa, he or she then must apply for a change of immigrant status. Either one of these processes may take months more to process.

Waiting 7 or more years for a foreign nurse's immigration process to be fully completed is not helping any hospital with its nursing staff shortages. If anything, the length and complexity of the process serves as a deterrent to hospitals and other health care institutions who may be considering employing foreign nurses. One of the easiest ways to increase the number of nurses and decrease the waiting time in the immigration process is to create a special priority category just for nurses. Under US immigration law, only an act of Congress amending the Immigration and Nationality Act (INA) or an executive order issued by the President can create this new category for immigrant visas.

Additionally, the federal government could take action to increase the number of immigrant and nonimmigrant visas available to nurses. This number is set each year by Congress. Currently, there only are 140,000 eligible visas for all five of the EB categories. By increasing the number of available visas and providing nurses with a special priority category for attaining a visa number, the federal government can take significant steps towards addressing the nursing shortage.

Meaningful health care reform cannot occur without tackling the nursing shortage. No matter what shape the US health care system takes in the future, there will always be a need for well-trained nurses. Without them, hospital care cannot be expected to improve. Individuals, health care providers and the public must urge their Congressmen to support immigration reform as important means through which to reform the broken US health care system.

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Management and control of community...

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breach of the fiduciary duty by a spouse, shall include, but not be limited to, an award to the claimant spouse of 50 percent, or an amount equal to 50 percent, of any asset undisclosed or transferred in breach of the fiduciary duty, plus attorney's fees and court costs. Fam. Code Sec. 1101(g). Under subsection g., attorney's fees and court costs are mandatory. If the breach by a spouse can be

shown to have been done with fraud, oppression or malice, the claimant spouse's remedies include an award of 100%, or an amount equal to 100%, of any asset undisclosed or transferred in breach of the fiduciary duty. Fam. Code Sec. 1101(h).

The relief afforded by Family Code Sec. 1101 is not exclusive. An aggrieved spouse may seek other remedies not outlined in the section. A spouse whose community property interests

have been compromised as a result of his/her spouse's breach may maintain an action to set aside an unauthorized transfer or encumbrance of property, or to impose a constructive trust. Many options are indeed available for one who is faced with a breach of fiduciary duty by his/her spouse. If you are faced with a breach of the fiduciary duty by your spouse, it is important to consult an attorney as soon as possible to determine what avenues of relief to pursue.

Attorney Kenneth Ursua Reyes was President of the Philippine American Bar Association. He is a member of both the Family Law section and immigration law section of the Los Angeles County Bar Association. He has extensive CPA experience prior to law practice. Law Offices of Kenneth Reyes, P.C. is located at 3699 Wilshire Blvd., Suite 700, Los Angeles, CA, 90010. Tel. (213) 388-1611 or e-mail kureyeslaw@aol.com. Website kenreyeslaw.com (Advertising Supplement)

Congress passes bill cancelling...

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some relief. The President's passing of the law grants much needed help to many immigrant families.

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 Website: www.rreeves.com

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)

Remembering Ate Mila
A Celebration of Life

Tuesday, November 3, 2009

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2pm Viewing

5pm Group Rosary

6pm Remembrance

For info, email monetsalon@aol.com

Or call 323-868-5578 | 323-448-5480 | 323-664-5085

Gone yet not forgotten, Although we are apart,
Your spirit lives within us, Forever in our hearts.

Milagros "Ate Mila" Dela Cruz
1947-2009