

COMMUNITY

JOURNAL

YOUR IMMIGRATION SOLUTION



ATTY. ROBERT REEVES & JOSEPH I. ELIAS

President signs law cancelling automatic revocation of petitions upon petitioner's death

US citizen under the age of 21 to continue processing even if the US citizen petitioner dies while the immigrant visa petition is either in process with the immigration service or has been approved. Before this law, if the US citizen died before the petition was approved or permanent resident status was granted, the spouse or child would be unable to obtain permanent resident status.

The second group covers the family preference categories who have approved or pending petitions. These include the spouse and unmarried children of permanent residents, the unmarried children over the age of 21 of US citizens, married children of US citizens, the brothers and sisters of US citizens, and the derivative children of this group. If a US citizen petitioned his sister in the Philippines, it would take approximately 22 years for a visa number to become available. If the US citizen died 15 years after filing, and before the visa number became available, his sister, her husband and their children would no longer be able to immigrate to the US. The new law, however, allows her and her family to immigrate to the US as long as they were residing in the US when the US citizen died and continued to reside in the US when their visa number became available.

The third group covers the derivative beneficiaries of pending or approved employment-based immigrant visa petitions. These are the spouse and unmarried children under 21 of someone sponsored under an employment based category. For example, an immigrant was petitioned by her employer as an accountant. She and her family are residing in the US. Her immigrant visa petition is either approved or in

process and she and her family are waiting for her priority date to be reached. Before her priority date is reached, or the USCIS can approve an application for adjustment of status, the accountant unfortunately dies. Prior to the new law, her family would not be able to continue the immigrant process. This scenario is unfortunately all too common. To add insult to the injury of losing a loved one, under the prior immigration law, the family would have no means of continuing the immigrant process. They would be required to bury a loved one and uproot their lives from the US. Under the new law, the family may continue processing for permanent resident status even if the principal beneficiary passes away. This law provides much comfort to those who have brought their families to the US and are dependent on the employment immigrant visa to provide immigrant status for the family. If they pass, their families will continue to be provided for in the immigrant process.

The fourth and fifth group covers spouse and children of asylees seeking a derivative asylum application and the beneficiary's of approved refugee/asylee relative petitions. They too may continue processing if the principal beneficiary or petitioning relative passes away while they are in process. The final group covers the spouse and children of "T" and "U" visa holders who may continue processing even if the principal beneficiary passes.

Unfortunately the new law does not apply to surviving family members residing outside of the US. But, Congress has recognized that families are being disrupted by the current immigration law and has provided

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