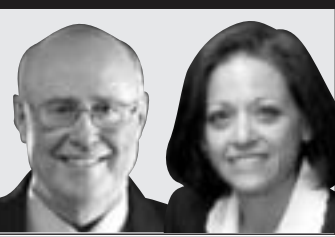


COMMUNITY JOURNAL

YOUR IMMIGRATION SOLUTION



ATTY. ROBERT REEVES & NANCY MILLER

K-1 visa holders can adjust after divorce

just her status to that of a lawful permanent resident. The application languished with the Immigration & Naturalization Service for two years. Just before the end of that two year period, Choin and Tapia were divorced. INS then denied Choin's application for adjustment. Homeland Security placed her in removal proceedings. The Immigration Judge and the Board of Immigration Appeals denied her application for adjustment of status and ordered her removed. They all agreed that, as a result of her divorce, she was not eligible to adjust her status. They said that

marriage be entered into in good faith. Therefore, as long as the K visa recipient timely married the petitioner in good faith and applied for adjustment based on that marriage, the duration of the marriage was irrelevant. Indeed, the parties did not need to still be married at the time of adjudication of the adjustment application.

In *Strokous v. Mukasey*, Natalya Stokous came to the US on a K-1 visa and married her petitioner Boris Bengel. They were divorced before she filed her application for permanent residence. USCIS denied her application for adjustment and the immigration judge found her to be removable. In relying upon the rationale in Choin, the Strokous court said that the fact that Strokous had divorced her husband prior to filing for adjustment was not a valid reason to deny her application for adjustment. They held that, because she had married her K-1 petitioner, she was eligible to adjust her status on the basis of that marriage even though she was divorced at the time she filed her adjustment application.

Divorce is difficult enough. Thankfully, in the Ninth Circuit, it may not mean the end of life in the United States for those who entered on a K-1 visa.

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)

“Those who live in the jurisdiction of the Ninth Circuit Court of Appeals (which includes California) can adjust their status based on their marriage, even after the marriage ends in divorce.”

The United States Citizenship and Immigration Services (USCIS) had long held that those who enter the United States on a K-1 (fiancé) visa can only adjust their status to that of permanent resident if their marriage is still intact at the time of the adjustment. Given how long it takes for adjustment applications to be adjudicated in some parts of the country, that can result in many K-1 visa holders being denied adjustment and having to return home. Those who live in the jurisdiction of the Ninth Circuit Court of Appeals (which includes California) can adjust their status based on their marriage, even after the marriage ends in divorce.

the relevant adjustment statute required that the couple still be married at the time of the initial grant of adjustment of status.

The Ninth Circuit said the case turned on the meaning of the term “as a result of the marriage of the non-immigrant.” The Court said that the language of the statute is ambiguous. It could mean that the marriage must exist on the date of adjustment or it could mean that the application must be based on the fact of the marriage. In further analyzing the relevant phrase, the Court acknowledged that the purpose of the Immigration Marriage Fraud Act of 1986 (which created the restriction on adjustment for K visa recipients) was to deter immigration-related marriage fraud. It held that nothing in the statute imposed a duration of marriage requirement. Rather, it found that the statute imposed a requirement that the

Two cases have addressed this issue. The first case was *Choin v. Mukasey*. Yelena Choin entered the United States on a K visa as the fiancée of US citizen Albert Tapia. After they were married, Choin filed an application to ad-

The Voice of FilAmerica

Political empowerment is still a treasure that eludes us as a community here in America. While we are the second largest Asian American community in the United States, we have yet to harvest the power that comes from our numbers. The Voice of FilAmerica features elected and appointed officials – regardless of political affiliation – in the different US states who are of Filipino ancestry. As your Filipino American community newspaper, the Asian Journal recognizes the fact that we all have a responsibility towards bringing political empowerment to fruition, especially for our future generations. It is our hope to have our voices heard all over America.

Michael Magaoay

Hawaii State Legislature Representative and Chair of the Filipino Caucus

by JOSEPH PIMENTEL
AJPress



Magoay has been a member of the Hawaii State House of Representatives since 2000.

Besides serving as the chair of the Filipino Caucus, he also chairs the Legislative Management committee and is a member of Energy & Environmental Protection, Finance, and Water, Land, Ocean Resources & Hawaiian Affairs committees.

He is also a member of the Governor's Turtle Bay Advisory Working Group and prevented the closing of Kahuku Hospital and Poamoho, according to reports.

“All that I have done has prepared me for this unique and special job,” he wrote on his website. “I am committed to our children, our community, our kupuna and our way of life. I care about our future.”

For the past two years, as chair of the Filipino caucus, Magoay has been influential in passing several legislations that benefit Filipino residents in Hawaii.

The Filipino Caucus members advocated for Filipino World War II veterans to receive pension benefits, burial grants and to reunite veterans with their family.

The Filipino Caucus has not only worked with legislators in the state of Hawaii but also those in Washington and leaders of the Filipino-American community. ■

HAWAII State Legislature Representative Filipino-American Michael Magaoay is the chair of the Filipino Caucus.

Started in February 2007, the Filipino Caucus of the House of Representatives serves as the voice for Filipino communities throughout Hawaii.

The 17-member caucus is composed of Representatives who have met at least one of the following criteria: (1) should be of Filipino descent, (2) should have been born in the Philippines, or (3) should represent a district with a large Filipino population.

“This is your floor and the more you reach out, the more successful we can be,” he said to the 17-member caucus. “We have to work cordially and set our priorities, because when we work together as one, we can really turn heads.”

Magoay represents District 46 that covers Kaena Point, Schofield, Mokuleia, Waiialua, Haleiwa, Waimea, Pupukea, Sunset, Kahuku, Kunia Camp, Poamoho, Wheeler, and Laie.

Born in Waiialua in Oahu, he grew up in Waiialua, graduating Waiialua High School in 1971.

A local product, he received a BS in Electrical Engineering from the University of Hawaii at Manoa on May 1976.



BEST TIME to Remodel



- Free Kitchen Design
- Free Granite Countertop Design
- Delivery Services Available
- Professional Granite Countertop Installation Services
- Huge Inventory On Cabinets & Granite

“Family Owned and Serving The Bay Area Since 1988”

Up to **40% Off** Kitchen & Bath Designer Brand Name



Kitchen & Bath Design Center
Oakland 258-276 11th Street Oakland, CA 94607
San Francisco 4228 Geary Blvd. San Francisco, CA 94118
Sunnyvale 458 E. El Camino Sunnyvale, CA 94087

PRO Warehouse In Stock!! 30,000+ Cabinets
Over 10 Styles To Choose From



Get 10% OFF on All Granite Material, Installation & Fabrication (Expires July 31, 2009)

Extra 15% OFF Team Efforts Signature & Design Series (Expires July 31, 2009)

Everyday Low Price & Huge Inventory:

Products	Starting Price	Inventory In Stock
- Ceramic Tile	\$0.89 SF	Over 300,000 SF
- Laminated Flooring	\$0.79 SF	Over 300,000 SF
- Solid Hardwood Flooring	\$1.69 SF	Over 250,000 SF
- Granite & Marble Tile	\$1.69 SF	Over 150,000 SF
- Granite Countertop	\$7.49 Lin Ft	Over 50,000 Lin Ft
- Toilet		
- Kitchen Fixture		
- Kitchen Sink		
- Bath Fixture		
- Bath Sink		
- Glass Vessel		
- Kitchen Appliance		
- Bath Appliance		
- Molding & Trims		
- Windows		
- Glass Shower Door		
- Shower Panel & More...		

Oakland 115 Market Street Oakland, CA 94607
Modesto 340 Spenser Avenue Modesto, CA 95354

“Sincere Services With Sincere Prices” www.SincereHardware.com

Powered by **Team Efforts** For Wholesale Only 1-877-TEC-1888 Dealer@TEcabinets.com **DEALERS WANTED** www.TEcabinets.com Kitchen Cabinets, Bath Vanities, Medicine Cabinets, Granite & Marble Flooring, Stainless Steel Sinks