

IMMIGRATION CORNER



ATTY. MICHAEL GURFINKEL

Using your old Section 245(i) filing for a newly filed case

(Part 2)

In a previous article, I discussed some of the commonly asked questions about the benefits of Section 245(i), which was a law that allows a person who is out of status to adjust status (be interviewed for a green card in the US), even if they overstayed, worked without authorization, snuck across the border, jumped ship, etc.

Here are some more commonly asked questions about Section 245(i):

Is Section 245(i) transferable from a case filed BEFORE the April 30, 2001 deadline to a new case filed AFTER the deadline?

According to USCIS, as long as you had any "approvable" family petition or labor certification application filed before the April 30, 2001 deadline, you are "grandfathered" under Section 245(i). If, after the April 30, 2001 deadline, you find a faster way to obtain a green card, you can "transfer" your Section 245(i) eligibility from the case filed before the deadline to a new case filed after the deadline (such as a new family petition, or a labor certification case by an employer). For example, if you

were petitioned by a brother, sister or a parent before the April 30, 2001 deadline, you would have secured Section 245(i) eligibility. However, these family petitions can take over 15 to 20 years before you could be eligible for a green card. If you should later find a faster way to get a green card, such as through an employer's labor certification application, the employer could file the labor certification application after the 245(i) deadline, and you could "transfer" your Section 245(i) eligibility from the petition filed by your parent, brother or sister (filed before the deadline), onto a new case (filed after the deadline). It is like a "245(i) coupon" that can be used with a later filed case. Therefore, if you have secured 245(i) eligibility, you should now look for faster ways to obtain a green card, and use the Section 245(i) from a "slow" case, and transfer it onto a "faster" case.

6. Could I still retain Section 245(i) eligibility if my original case was denied or withdrawn?

According to USCIS as long as a person's case was "approvable when filed," the alien would continue to be grandfathered under Section 245(i), even if circumstances change, such as the petitioner dies, the employer goes out of business, etc. While it is true that the particular petition would be considered "dead" (and will not result in a green card), the alien would still preserve his

or her Section 245(i) eligibility, which could later be used in a new case filed after the deadline. For example, if you were sponsored by an employer through a labor certification application filed before the deadline, but the employer later goes out of business, you could still preserve your Section 245(i) eligibility. Although that particular employer's case would be considered "dead," you could thereafter find another employer, who could file a new case, and you could "transfer" or preserve your Section 245(i) from the dead case, and use that Section 245(i) eligibility with the new case, filed after the deadline. The key is that the original family petition or labor certification application case must have been "approvable when filed" in order for a person to preserve Section 245(i). If, at the outset, the case is fraudulent or lacked merit, then a person would not preserve Section 245(i).

As you can see, there are numerous advantages to Section 245(i), once you have been "grandfathered." The fact that Section 245(i) eligibility is transferable to a different case, and is retained even after various changes in circumstances, means that you should look for faster ways to obtain a green card.

If you have been grandfathered under Section 245(i) under a slow-family petition, you should consider finding an employer for

labor certification. In addition, I strongly recommend that you seek the advice of a reputable attorney, who can analyze your situation, and advise you on the proper way of legalizing your status in the fastest possible way, using the transferability benefits of Section 245(i). If you are out of status, but have Section 245(i) eligibility, use it to its fullest potential! In a future article, I will discuss more

frequently asked questions about Section 245(i).

Michael J. Gurfinkel is licensed, and an active member of the State Bar of California and New York. All immigration services are provided by, or under the supervision of, an active member of the State Bar of California. Each case is different.

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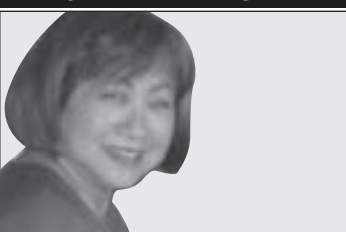
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(Advertising Supplement)



MISTAKEN IDENTITY RESULTS IN FRAUD DENIAL. Papa Ernesto (third from right) brought his family (shown in photo with Citizen Pinoy hosts) to the US 20 years ago. Eldest son Erwin (not in photo) was left behind since he was already over 21 years old. Papa Ernesto petitioned Erwin as his unmarried son, but the family was devastated when Erwin, at his interview at the US Embassy in 2006, was confronted with a marriage contract, showing his name and his parents' names on it! Find out the unbelievable twists on Erwin's case of a "single" groom, when leading immigration attorney Michael J. Gurfinkel and broadcast personality Gel Santos-Relos bring you Citizen Pinoy this Sunday at 5:40 pm (PST), with a replay on Tuesday at 11:20 pm (PST) on TFC. Citizen Pinoy also airs on ANC-US every Sunday at 12 midnight, with replays on Sunday at 8 am and Thursday at 7 pm, all PST; and on ANC-Philippines every Sunday at 4 pm, with replays at 12 midnight on Mondays and Friday at 11 am; all PST.

IMMIGRANT LIVING: 101 AND BEYOND



MONETTE ADEVA MAGLAYA

(This is a favorite, particularly among women readers, and I am reprising it here.)

HAVE you ever gone through a "winter of discontent" and wondered quietly if you could trade your life for someone else's?

If you have, don't flog yourself

Of charmed lives and weathering the 'winter of our discontent'

"Now is the winter of our discontent made glorious summer by this son of York."

— William Shakespeare

silly. You don't even have to admit it to anyone else but yourself. It's nothing more than a normal rite of passage that allows us to imagine what it would be like if we had someone else's luck, genetic make-up, breaks, talent, connections, relations, education, intelligence, looks, skin color, pedigree and other x factors that are supposed to tip the scale in our favor and

make us happy and fulfilled. In short, these refer to those things that allow us to live a charmed life and drive our fellow men mad with envy.

The discontent hits you when you're feeling most vulnerable: when there's not enough cash to tide you over until the next pay period; your job stinks; you're going through an extended rough patch

with your wife or husband or lover; your car needs an overhaul; your kid hit a schoolmate and you need to see the principal; your sister in the home country, needs you to remit moolah fast, and lots of it, because your younger brother got into trouble and needs bail money. Everything sucks. Well, you get the picture of a gothic novel nobody wants to read. You want to scuttle everything and trade up to a charmed life. But would you, if you knew the real score behind those deceptive, airbrushed images of the charmed lives we see on TV and the rags we read?

We are sitting ducks open to negative suggestions we receive

non-stop. We end up unhappy and dissatisfied with who we are, what we have and our place in the universe. We're too fat, too short, too poor, too old. We don't make enough. We drive clunkers. Our clothes are passé. Our nose bridge needs a lift; the chest is too flat; hair is too thin; skin is too sallow; our eyes need to be lasered; our teeth need whitening; our ears stick out; our behinds, too saggy. Picture the word REJECT stamped on our pathetic, little foreheads if we were in a conveyor belt in an assembly line, as we head directly to the recycling bin unless we undergo a drastic make-over that will cost us plenty.

We look and read about the airbrushed lives of celebrities on the red carpet. We see them parading and preening in their Pradas, Jimmy Choos, or Blahnik shoes, sheathed in thousand dollar Versace and Vera Wang gowns with décolletage showcasing ample natural or shored up cleavages, their gravity-defying faces tight with botox or nipped and tucked by a surgeon's scalpel and dripping in Harry Winston gems, escorted by equally gorgeous hunks dressed to the nines in their Armanis, as media people buzz around them like flies around honey. And we're hoodwinked to the vision of

Continued on PAGE B5

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Barry Flores

Filipino Fleet Sales Manager

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