

**DEBT RELIEF**



**ATTY. LAWRENCE YANG**

# Adequate recordkeeping required for BK discharge

more than a third or \$75,000 of the debtor's money was spent during that time frame. The court found it's inability to identify how such a large amount of money was spent very troubling and said that the plaintiff had satisfied her burden to prove that the debtor failed to keep or preserve recorded information from which his financial condition might be ascertained.

Debtor could still have obtained his discharge if he was able to justify that his failure to keep records was justified under the circumstances of the case. For instance, if debtor could have shown the court that someone else like a bookkeeper had the responsibility of recording the payment transactions and that he had relied on that bookkeeper to keep his financial records accurate, debtor would still have gotten his discharge. I see many clients who obtained home equity loans or second trust deeds for large amounts. It is not uncommon to see Heloc lines of \$100,000 to \$200,000 that have been totally used up by the time clients want bankruptcy relief. In situations like this, debtors are well advised to keep financial records of how the money was used. Debtors should

keep copies of cancelled checks evidencing where the money went. Sometimes cash was used to pay for home improvements and there are no cancelled checks. Have the contractor sign receipts for the cash payments made, and keep receipts for cash payments of materials used. Require the contractor to give you a written contract for the home improvement job clearly spelling out the nature of the work to be done and the cost of the contract. If possible, get a copy of the driver's license and the contractor's license of the home improvement contractor.

If money was sent abroad for emergencies or tuition, keep proof of the telegraphic transfer of money from the US bank to the foreign bank. If money was sent for a medical emergency, get copies of medical and hospital bills, and the medical diagnosis requiring hospitalization. If foreign tuition was paid, get copies of the receipts from the schools that were paid. If money was not wired through the bank system but given to a relative to bring abroad so payments could be made, receipts for the money paid abroad should be kept. If debtor used money to fund a busi-

ness, money transfers from debtor to the business must be recorded. If the beneficiary business lost the money transferred to it by debtor, debtor should be able to prove by documents how the business lost the money.

It is always good business sense to keep adequate records of all financial transactions. If a large payment was to pay off an obligation, keep the original or copy of the document that proves that the money was legally owed. For instance, if you paid your cousin \$20,000 because he lent you that amount, keep a copy of the promissory note that shows you owed him \$20,000. Remember, without adequate records, you may not be able to obtain a discharge of your debts. Section 727(a)(3) is very clear on this matter.

Contact my office if you need debt relief. I will analyze your case personally..

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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.

(Advertising Supplement)

# New relief for widows and widowers of deceased US Citizens

**PROBLEM SOLVED**



**ROBERT J. DUPONT**

ONE of the great tragedies in life is loss of a beloved spouse. Recently the courts have ruled to prevent the US Citizenship and Immigration Service (USCIS) from making the situation worse by denying immigrant visa cases filed by US citizen spouses who later died. While the USCIS allows a United States citizen husband or wife to file an immigrant visa petition for his or her alien spouse, serious legal problems arise when the petitioning spouse dies prior to the approval of the immigrant visa and legal permanent resident petition.

In dealing with these cases, the USCIS has interpreted the existing law very narrowly – it has required that US citizen spouses be married to their alien spouses for a period for two years and that there be no separation between the husband and wife prior to the death of the US citizen spouse. This has been commonly known as the "widow penalty." While the law specifically requires widows and widowers of US citizens to have been married for two years before they can self-petition for permanent residence when their US citizen spouses had never filed an immigrant visa before death, the same is not true for petitions filed by US citizens who later died.

Yet, the USCIS, a matter of policy, has been incorrectly treating both types of petitions in the same fashion. In fact, the USCIS has been routinely denying marriage-based immigrant visa petitions (and corresponding green card applications) in cases when the US citizen spouse dies prior to the second wedding anniversary and before the petitions are approved. The denials are based on the USCIS's erroneous position that following the death of the US citizen husband or wife the alien spouse is no longer a "spouse" under the immigration law and is, as such, no longer eligible for permanent residence in the United States. Even worse, some alien spouses have been placed in removal proceedings after their green card applications had been denied by the USCIS.

Needless to say, many lawsuits have been filed against the USCIS regarding this matter. The Court of Appeals for the Ninth Circuit (which has appellate authority over California, Nevada, Hawaii, Idaho, Montana, Oregon and Washington) was the first circuit court to address this issue. In its precedential case of Freeman v. Gonzalez decided in

2006, the Ninth Circuit held that alien spouses remain immediate relative spouse for the purpose of the immigration law, and that the death of their US citizen spouses prior to the second wedding anniversary does not strip them of the opportunity to obtain permanent residence in the United States.

District Courts around the country have adopted the holding in the Freeman case by granting relief in New Jersey, New York, Massachusetts and Ohio. Now the Sixth Court of Appeals joins the Ninth Circuit by in its recent decision of Lockart v. Napolitano. In Lockhart, the Court held that the widow-penalty should be eliminated. Ms. Lockhart, a Filipino citizen, was married to a US citizen husband who filed a marriage-based petition on her behalf. The Lockharts had a happy marriage, which included the birth of their son. Unfortunately, Mr. Lockhart suffered a heart attack and died one month before the couple celebrated their second wedding anniversary. At that time, the husband's immigration visa petition and Ms. Lockhart's green card application were pending. Both applications were later denied and Ms. Lockhart was eventually placed in removal proceedings. By striking down the widow penalty, the Sixth Court of Appeals ruled in Ms. Lockhart's favor.

This case is important because it crystallizes the concept of the "surviving spouse" and makes clear that the USCIS's interpretation of the regulations has been incorrect. In light of these two appellate cases, widows and widowers of US citizens in similar circumstances, especially if they reside within the jurisdiction of the Sixth and Ninth Circuit Court of Appeals, should consider hiring a competent attorney before they attend their green card interviews. And there may be legal avenues available to them even if their applications have already been denied. A knowledgeable immigration attorney may be in the position to re-file or reopen their cases, and argue in favor of their surviving spouse status.

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Robert J. DuPont is an attorney with the law firm of Wilner & O'Reilly. Mr. DuPont graduated from Yale University and USC Law School and is admitted to the California Supreme Court, and Federal District Courts in the Central and Northern Districts of California as well as the 9th Circuit Court of Appeals. Mr. DuPont is a regular speaker with ILW, and past chairman of the Immigration Law Committee with the Beverly Hills Bar Association. Mr. DuPont has risen to prominence with a 10 year practice in the field of immigration law as well as influencing Department of State and USCIS practices and policies through Federal District Court litigation including a Ninth Circuit Court of Appeals decision on V-Visas eliminating age-out of minor V-visa recipients.

Please contact Robert DuPont 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](http://www.wilneroreilly.com).

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**BARRISTER'S CORNER**



**ATTY. KENNETH URSUA REYES**

# What to do with conditional Greencard status in troubled marriages

were becoming married to United States citizens merely to obtain permanent residence status, a two-step procedure under the Immigration Marriage Fraud Amendments of 1986 (IMFA) was set up to ensure such status was given to those only in marriages that are bona-fide and not entered into simply for immigration purposes.

Under step one of the procedure, if a person is petitioned by his/her US citizen spouse within 24 months after becoming married, that person is given only conditional permanent residence. Such conditional permanent residence status lasts for two years from the date on which it is granted.

Step two of the procedure involves the removal of the conditional label to permanent residence status. Removal of the conditional

label is initiated by filing an I-751 Joint Petition to Remove Condition to Permanent Residence ("Joint Petition"). The Joint Petition provides an opportunity for the United States Citizenship and Immigration Services ("USCIS") to inquire as to the legitimacy of the marriage after conditional permanent residence is granted. Accordingly, documentation evidencing that the marriage was entered into for bona-fide reasons should be submitted as part of the Joint Petition. The Joint Petition must be filed with the USCIS service center in the 90 days immediately prior to the second anniversary of the granting of conditional permanent residence.

Typically, upon the filing of the Joint Petition, a one-year extension of the conditional permanent resi-

dence is granted. The extension affords the USCIS time to schedule an interview with the person seeking permanent residence, and to make a determination as to whether unconditional permanent residence will be granted for a ten-year period. In cases in which documentation submitted as part of the Joint Petition clearly show that the marriage is bona-fide and not merely for immigration purposes, INS may approve a Joint Petition without an interview.

The procedure described hereinabove applies in situations where the marriage has not been terminated. Often, the Joint Petition cannot be filed or approved because the marriage, although bona-fide when entered into, has been terminated by divorce. May aliens become threatened of falling out of status once their marriage is in trouble because the spouse often refuse to cooperate or has filed a divorce petition. In such cases there is still hope and the prospect of obtaining unconditional permanent residence status still remains. A waiver of the joint petition requirement may be sought in such cases.

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Atty. 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](mailto:kureyeslaw@aol.com). Visit website [Kenreyeslaw.com](http://Kenreyeslaw.com).

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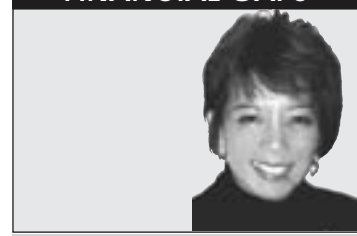
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**BRIDGING FINANCIAL GAPS**



**EVANGELINE A. GIRON**

THE power of attorney is perhaps the most important tool a person needs to protect financial interests if there comes a time when an individual is not able to act. Signing a power of attorney is absolutely critical to ensure a person's future independence in the event of illness or incapacity. Without it, one risks having his or her affairs managed by a court-appointed guardian, possibly a stranger, under court supervision and often without the ability to have any input. In other words, the person literally loses financial control. The power of attorney is the cornerstone of a financial management plan. It ensures that a person's wishes will be respected if there comes a time when he or she is unable to act. It is a written document whereby someone is appointed to manage that person's financial affairs in the event of illness or incapacity.

The person executing the power of attorney (called the "principal") appoints another (called the "attorney-in-fact," "proxy," or "agent") who, through this legal document,

# The power of a Power of Attorney

is empowered to manage the principal's financial affairs. The attorney-in-fact can be a spouse, a child or someone else. That designated person can pay bills, make banking and brokerage account transactions, and even bring a lawsuit. Generally the power of attorney spells out in detail the specific powers that the attorney-in-fact will have.

Powers of attorney are governed by state law, which determines the process required for executing a valid power of attorney, the powers that may be granted to the attorney-in-fact, and other provisions concerning validity and duration of a power of attorney. When you create and sign a power of attorney, you give another person legal authority to act on your behalf. This person is called your "attorney-in-fact" or, sometimes, your "agent." The word "attorney" here means anyone authorized to act on another's behalf; it's most definitely not restricted to lawyers.

A "durable" power of attorney stays valid even if you become unable to handle your own affairs (incapacitated). If you don't specify that you want your power of attorney to be durable, it will automatically end if you later become incapacitated.

Evangeline Giron Financial & Legal Group can create a legally valid (signed in the presence of a notary public and two witnesses) durable power of attorney for your estate planning needs. Call us today to create your power of attorney, an essential document in estate planning.

NOTE: Evangeline is not an attorney nor does she provide legal advice. She prepares legal documents at the specific direction of the client. At your request, she can file your legal documents at the appropriate court. She is a Legal Document Assistant (LDA # 397, registered and bonded in Los Angeles County, expires 3/23/2011). For additional information, please check her website at [www.evangelinegiron.net](http://www.evangelinegiron.net).

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