

PROTECTING RIGHT & \$

Changing jobs while on pending Form I-485



ATTY. JOEL R. BANDER

ACCORDING to the May 2009 Visa Bulletin, EB-3 visas are unavailable. The slow processing of applications for adjustment of status (Form I-485) and those with pending Form I-485 are faced with seemingly endless waiting for their green cards. This is problematic especially for those whose petitioning employers have shut down their businesses or at the brink of doing so due to the present economic situation. Fortunately, with the portability of employment-based immigrant petition (Form I-140), those with approved Form I-140 can avail of the opportunity to change to a new employment provided certain requirements are met. Under Section 106(c) of the American Competitiveness in the Twenty-First Century Act of 2000 (AC21), the approval of a Form

I-140 petition shall remain valid when an alien changes jobs or employers if: (1) the Form I-485 has been pending for at least 180 days; and (2) the new job is in the same or similar occupational classification as the job for which the Form I-140 petition was filed. Under current regulations, the Form I-140 must have been approved before a favorable determination of a portability request can be made.

In filing a request for Form I-140 portability, the alien is expected to submit evidence that the new offer of employment is in the same or similar occupational classification as the offer of employment for which the Form I-140 petition was filed. The USCIS adjudicators consider the following factors in determining whether the two employments are same or similar: (1) job descriptions; (2) Dictionary of Occupational Title and/or Standard Occupational Classification code assigned to the Form I-140 job offer and that which may be appropriate for the new position; and (3) substantial discrepancy between the Form I-140 wage and the wage offered for the new position.

An alien availing of the Form I-140 portability benefit is not required by law to notify the USCIS. However, under certain circumstances, it would be prudent to do so. Under USCIS rules, if the approved Form I-140 is revoked or withdrawn by the employer after the Form I-485 has been pending for at least 180 days, and the alien has not submitted evidence of a new qualifying offer of employment, the adjudicating officer is required to issue a Notice of Intent to Deny the pending Form I-485. If the alien fails to respond or fails to establish that the new offer of employment is in the same or similar occupation, the adjudicating officer may immediately deny the Form I-485.

The successor employer is not required to apply for a new labor certification or file a new Form I-140 to enable the alien to port to the new employment. It is also not necessary that the new employment be in the same geographic area as the Form I-140 position. The new employment may be in a different county or state, as long as it is for same or similar occupational classification. Further, the new employment need not comply

with the prevailing wage set in the underlying labor certification and Form I-140 petition. However, a substantial discrepancy in the wage rates may be considered for purposes of determining whether the two positions are same or similar.

If you have any questions regarding Form I-140 portability, we at Bander Law Firm are happy to assist you. Our firm has multilingual staff who can communicate effectively in Tagalog, Spanish, Korean, Sinhala, Farsi and Mandarin. Please feel free to call Bander Law Firm at 213-873-4333 t. To learn more about immigration concerns and read Atty. Bander's previous articles, visit www.BanderLaw.com.

Atty. Joel R. Bander is the partner of Bander Law Firm, LLP. With over 15 years of litigation and immigration experience, Mr. Bander is a leading litigator and accomplished trial strategist. He has successfully handled numerous cases before Federal, State, Civil, and Criminal Judges and has participated in hundreds of arbitrations and trials.
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(Advertising Supplement)

RE-UNION
Filipino-American Associations in America

Searching for a kababata from your hometown, a college buddy or a Pinoy colleague? Your search is finally over. The Asian Journal brings you Re:Union, Filipino American Associations in America -- your link to a network of kababayan associations here in the United States. As your Filipino-American community newspaper, the Asian Journal recognizes your need to nourish and maintain ties with the people and the culture you were born with. This is our way of connecting our kababayans to the past, of creating new opportunities for the present and of inspiring you to pay it forward by becoming active members of your association and the FilAm community at large in the future.

Philippine Nurses Association of America (PNAA)

Caring for a stronger foundation today for the next generation thru Nursing

THE beginning There were many problems encountered by Filipino nurses migrating to the United States in the early 60's and 70's. To help each other, many nurses in different states formed associations in their regions. However, there was no national organization linking them together. In 1979, the year of the birth of PNAA, there were already established PNA (Philippine Nurses Association) chapters in different states which were independent of each other; PNA of New York(1929), PNA-Chicago, PNA- Michigan, PNA-New Jersey, PNA-Southern California. Each was functioning independently dealing with their Filipino nurses' migrant issues and problems, as well as employer exploitations and human rights violations.

In response to the need for a concerted effort to deal with problems encountered by Filipino nurses in the United States, The Philippine Nurses Association of New Jersey sponsored a national conference with the theme Assertiveness in Nursing which was held at the Ramada Inn, East Brunswick, New Jersey on April 21, 1979. They invited the various presidents of the different independent PNA chapters to come to New Jersey and join PNA-NJ's conference with the thought in mind to begin the talks for an organizing caucus for a national association.

From that conference, they founded a national organization which was named the National Federation of Philippine Nurses Association in the United States. Following is the first set of elected officers:

- President - Clarita Mirafior, Southern California
- Vice-President - Maria Redona Couper, Chicago
- Corresponding Secretary - Phoebe Andes, New Jersey
- Recording Secretary - Remedios Solarte, Michigan
- Treasurer - Femi Sonza James
- Asst Treasurer - Mary PA-

blico, Southern California
PRO - Filipinas Lowery, New York

Asst PRO - Abigail Autojay, Southern California
Adviser - Purita Asperilla, New York

Legal Advisor - Wilfredo Panotes, ESQ

And so was born what we now know as the Philippine Nurses Association of America.

PNAA mission
Uphold and foster the positive image and welfare of its constituent members.

Promote professional excellence and contribute to significant outcomes to healthcare and society.

Vision
To be an organization responsive to its constituent needs and be a force in the world arena of nursing.

Objectives
Providing quality, safe, compassionate care to the People of America.

A caring nursing trust - one which PNAA will preserve and honor to the best of its ability.

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ATTY. KENNETH URSUA REYES

What to do with conditional Greencard status in troubled marriages

MARRIAGE for many persons is the culmination of one's life. Getting married signifies the beginning of a new phase in life, both socially and economically. For those persons who lack permanent residency in the United States and have married a United States citizen, marriage also presents an opportunity to obtain permanent residency. However, although the opportunity to obtain permanent residency arises in such situations, one must be aware of and comply with procedures in existence to obtain such status. Due to concerns that persons 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 residence 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.

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. Visit website Kenreyeslaw.com.
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HOME BUYERS



KENNETH GO

CALLER: I am trying to find a way to lower my payments, our loan currently is going to adjust by 25 percent come November 08'. At this point I am already having a hard time paying the mortgage, what should I do. I heard about "Loan Modification" and have been trying to do that for two months but am not getting anywhere? I also talked to someone wanting to charge me \$3,000 for doing this for me.

Ken Go: First of all, I am repeatedly telling everyone that you should not pay anyone to help you deal with your lender or do a Loan Modification. There are government agencies and non-profit organizations that will help you do it for FREE. The key question here is whether you are currently late on your mortgage when you are calling your lender for a Loan Modification. If you are still paying them, they will more than likely not agree to help you, because currently there are about 7-8 thousand people going into foreclosure everyday nationwide. So, they will prioritize the customers that are already late, but don't get discourage because you should still try and see if they will agree. But Obama has a new program helping people without any lates but currently cannot refinance because their equity dropped.

Caller: I want to refinance my 7.5 percent rate but was declined due to my income they say being too much. I tried to work more to be able to afford my payments and now they are saying I make too much money.

Are you still considering a loan modification with promises of 'balance reduction?'

Ken: Again, you are calling at the perfect timing, Obama's Package will allow you to refinance if you live in your home and have not made any late payments. You will have to qualify and your property value cannot exceed 105 percent of your current balance. Most lenders have this program and your loan amount can go up to \$625,500. I believe this should help out qualified homeowners to get out of their ARM/Predatory loans.

Caller: I can't refinance my house and my loan payments are going up to a point that I cannot afford it anymore. What should I do?

Ken Go: This is a growing epidemic that is getting out of proportion and I get calls like this all day long. My suggestion: get your finances together be honest with yourself and see what your actual monthly expenses are, include everything even your snacks, your small vices everything. Then put down how much you are netting from your pay stubs and you will be surprised to know that you are just living on the edge every month with your paycheck. If you cannot afford the house, then you have to really decide on other options to keep yourself afloat. See yourself six month to one year from now, even if you have a fixed rate loan, can you really afford the payments? If not, then be honest and sort out options. Treat this home buying experience as a business, its not personal definitely not sentimental.

Caller: I own multiple properties and I cannot keep two of them. So, can you help me to sell in order for the bank not to process a deficiency against me.

Ken Go: This happened about 9 months ago where I tried to

Short Sale this clients house and took me about 6 months to almost get the sale approved by the lenders. But towards the end, the sellers where solicited by a Loan Modification company and promised balance reduction of this property. Obviously they bought into this and ask me about it. I have interest in the short sale transaction but cannot be bias, so I said for them to be very careful because I have never seen a balance reduction approved before. So, sadly my 6-7 months of work went array. Just recently after another 5 months I got a call from the seller, they left me a message saying something about the Loan Modification. So, I called them immediately and they claimed that the bank declined them all together. I said how much did you spend, they claimed to pay \$6,000 for two properties and that they would only get 15 percent back due to the work they put it. So, I suggested for them to demand for the entire amount and I called the lender to find out how many times did this Loan Modification Company actually called the lender. Guess how many times they called. 4 within 5 months for \$3,000 a piece. I would think this is a major rip off.

I am very frustrated that my work was taken away by fraud, now we have sent in a report to the FTC and Secretary General in Sacramento with this companies short comings. Hopefully they will stop doing this kind of deceiving promises to homeowners.

Call Ken Go of 1st Innovative Finance Group to give you a quote, call (888) 822-5363 or write to: Kennethgo@verizon.net
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