

COMMUNITY

JOURNAL

K-1 visa holders can adjust after divorce

YOUR IMMIGRATION SOLUTION



ATTY. ROBERT REEVES & NANCY MILLER

K-1 (FIANCÉ) visa holders come to the United States full of hope. They are coming to marry the person they love and are looking forward to a new life in the United States. Sometimes, the marriage does not work out. Since the only way the non-citizen can adjust status is through the marriage to the K petitioner, the fiancé visa holder is left wondering what effect the divorce will have on their new life in this country.

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.

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 adjust 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 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".

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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 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 Strokous came to the US on a K-1 visa and married her petitioner Borus 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.
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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)



ATTY. RAY BULAON

“5 Facts You Should Know About Bankruptcy”

1. Bankruptcy is not always your fault.

If you are overwhelmed with debt problems, you may feel alone, depressed, guilty or all of the above. In most cases, bankruptcy is caused by events beyond your control- job loss, sickness, disability, divorce, to name a few. In others, it is simply due to poor financial planning. Don't be too hard on yourself. Life is not perfect- and neither are you.

2. There is life after bankruptcy.

Some people have the mistaken belief that once they file, life will never be "normal" again and that their credit is ruined forever. The truth is that most people who file bankruptcy are able to rebuild credit very quickly only after a few years and buy a home like everyone else.

3. Bankruptcy provides immediate debt relief.

The day you file bankruptcy, creditors have no choice but to leave you alone. That means no more harassment from creditors, lawsuits, judgments or wage garnishments. The relief is immediate. Suddenly you can breathe better and feel like a human being again.

4. Most people who file bankruptcy keep everything and lose nothing.

Some people are worried that once they file, they will automatically lose everything that they have worked so hard for. The truth is that in most cases, you get to protect your home, car, bank account and all other assets. You lose nothing but your debts.

5. Choosing the right bankruptcy attorney to help you is essential.

Choose a lawyer who not only has the knowledge and experience to handle your case (the "legal side") but also one who has your best interests at heart- someone who will take time to listen, answer your questions, and someone who understands the "human side" of bankruptcy.

(Important: None of the information herein is intended to give legal advice for any specific situation. Bankruptcy laws are often complex and situations vary. For a FREE LEGAL ANALYSIS of your situation, please call for an appointment.)

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BEFORE AFTER

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