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ATTY. ROBERT REEVES & NANCY MILLER

## K-1 visa holders can adjust after divorce

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".

*“ 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 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.

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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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(Advertising Supplement)

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