

YOUR IMMIGRATION SOLUTION



ATTY. ROBERT REEVES & NANCY MILLER

WHEN placed into removal proceedings, the wise alien hires a knowledgeable and experienced immigration attorney to represent him. In so doing, he reasonably relies upon his attorney's expertise. He hopes and expects that his attorney will raise and effectively present his case before the court. Most of the time, his reliance is well-placed. When it is not, he may be able to have this case reopened by raising a claim of ineffective assistance of counsel.

In 1988, the Board of Immigration Appeals (BIA) issued a decision in Matter of Lozada, which established the procedural requirements for filing a motion to reopen deportation or removal proceedings based upon a claim of ineffective assistance of counsel. The Lozada motion has four requirements. It must be supported by affidavit setting forth the agreement and representations by counsel. It must inform the

Right to effective assistance of counsel returns

counsel against whom the claim is made of the claim and give counsel an opportunity to respond. It must also reflect whether a claim or charge has been filed with the bar to which the counsel is a member. If one has not been made, it must explain why not. Finally, it must show how the alien was prejudiced by the action or inaction of his counsel.

In a decision that shocked both the legal and the immigrant community, the former Attorney General overruled that well-established precedent on January 7, 2009 in Matter of Compean (Compean 1). After paying lip-service to the fact that the Lozada framework had stood the test of time, former Attorney General Mukasey rejected its reasoning and ordered the Board not to rely upon it, even in the exercise of discretion. In so doing, he determined that there was no constitutional right to effective assistance of counsel in the immigration court context. Under Compean 1, claims of ineffective assistance of counsel were to be decided as an exercise of the Attorney General's administrative discretion. In addition, the new formulation needed to show prejudice differed from that followed by many courts.

On June 3, 2009, the current Attorney General, Eric H. Holder, Jr., vacated the Compean 1. In what we will call Compean 2, Attorney General Holder instructed the BIA to follow the pre-Compean 1 standards to all pending and future motions to reopen based upon ineffective assistance of counsel, regardless of when such motions were filed. In other words, Attorney General Holder told the BIA to go back to the Lozada standard—even for motions that were filed during the time the decision was overruled. The Attorney General also took this opportunity to resolve a long-standing question of whether the BIA has the authority to reopen removal proceedings based on ineffective assistance of counsel conduct that occurred after a final order of removal had been entered. The Attorney General determined that the BIA did have the authority to consider such claims and to reopen those cases. He declined to define the scope of the BIA's discretion and left it to the BIA to make that determination.

In addition to overruling Compean 1 and reinstating Lozada, the Attorney General directed the Acting Director of the Executive Office for

Immigration Review to initiate rulemaking procedures as soon as practicable to evaluate the Lozada framework and to determine what modifications should be proposed for public consideration. Following solicitation of information and public comment by publication of a proposed rule in the Federal Register, a new or modified framework for reviewing claims of ineffective assistance of counsel in immigration proceedings may be instituted. In the meantime, the standard that has existed for over twenty years is back.

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)

Mar, Korina seal engagement Filipino-style

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Mar on-key," explained a family friend who attended. Epy repeatedly reminded the audience, "He's a senator not a singer."

Mar also recited a long Tagalog love poem for Korina and engaged in a "balagtasán" (debate in verse) with poet Jericho Tanig.

"Kahapon, Ngayon at Bukas (Yesterday, Today and Tomorrow)," the wedding song—specially composed by Vehnee Saturno based on Korina's response to Mar's wedding proposal on nationwide television—was previewed in a performance by ABS-CBN talents Erik Santos and Sarah Geronimo.

Later, the couple joined performers from Bulacan in a traditional dance, according to Korina's friend, showbiz journalist Cristy Fermin. "The guests threw flowers at their feet, and made a toast for Korina and Mar to have a good life together," the journalist said.

Guests were served pasta, paella, and steak cutlets prepared by the Araneta-owned Italian fusion restaurant Cibo. "Callos," a Sanchez family specialty, and cheesecake from Korina's personal recipe were also served. (The four-car garage had been transformed into a huge kitchen.)

Korina's immediate relatives and close friends were present. The Araneta-Roxas clan members in attendance included Stella Marquez-Araneta, Veana and Margarita Fores, and Mar's 15-year-old son Paolo, whom the senator introduced as "someone I am very proud of."

The engaged couple still did not give a wedding date, but said it would be before the yearend. The senator joked, "Sinabí ko nga kay Korina magtanan na lang kami. It suggested to Korina that we should instead elope!"

Last June 8, Korina said in a radio phone patch from Japan that the wedding ceremony would be held at Redemptorist Church in Baclaran, Parañaque, or at the Minor Basilica of the Black Nazarene in Quiapo, Manila.

On the same program, Korina announced that Baby James, the two-year-old son of TV host Kris Aquino and cager James Yap, would be the ringbearer.

In an unconfirmed report, the couple is said to have asked former Philippine National Red Cross governor Rosa Rosal to be one of their principal wedding sponsors. Rosal was one of the guests at the "pamanhikan."

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Governor names New Leader for Nevada National Guard

Brigadier General William R. Burks will be Nevada's next Adjutant General

CARSON CITY—Governor Jim Gibbons announced today the appointment of Brigadier General William R. Burks as Nevada's next Adjutant General. General Burks will replace Major General Cynthia Kirkland, whose four year term ends today. The Adjutant General is the senior state military official and the leader of the 3000+ members of the Nevada Army and Air National Guard.

The qualifications for Adjutant General are set forth in Nevada law. He or she must be a Nevada Guardsperson with at least six years of service in the state's militia. In selecting Burks, the Governor highlighted this unique and broad based qualifications for the job. "Here, I have a Nevada Guardsman

like none other," Gibbons said, "Not only has he been a Nevada Guardsman since the day he enlisted, but he has seen combat, is a decorated war hero, and was awarded the Distinguished Flying Cross." Burks also has extensive military management experience.

A native Nevadan, Burks grew up in Reno, graduated from the University of Nevada, Reno with a degree in accounting, and is a licensed CPA. He also holds a Master's Degree in National Security Strategy, having attended the National Defense University in Washington DC, in residency for a year.

"When Governor Guinn appointed General Kirkland as the State's first female Adjutant General, he set the stage for

military change here in the Silver State," Gibbons said. "I humbly thank her for her service and dedication to the State and the Nation. And, now that I have the opportunity to appoint her successor, I want to continue and expand that change momentum with General Burks. There is no one better suited to use his experience, his contacts and his understanding of the Washington defense system to expand our National Guard operations and facilities across Nevada."

Burks will assume command of the Nevada Guard on Wednesday June 17, 2009. An assumption-of-command ceremony will be scheduled later in the summer.

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