

YOUR IMMIGRATION SOLUTION



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Confidentiality provisions of legalization

and deportation proceedings ensued, while others returned home. Other Legalization applicants remained in the US and later found new paths to obtaining permanent residency ("Green Card"), such as family or employment-based applications. As a part of both the Green Card and Citizenship processes, applicants are normally called for interviews at a Department of Homeland Security (DHS) field office, before a DHS officer.

During such interviews, Green Card applicants can expect that the officer has undertaken a thorough review of that applicant's entire history of immigration documentation. Applicants are often worried that something that was submitted in their Legalization application (years and often decades before) could be used against them in their current permanent residency case. It is precisely for this reason, that the confidentiality provisions of the Legalization laws were created. Confidentiality provisions built into the Immigration and

Nationality Act (INA) state that the information contained in an application for Temporary Residency under Section 245A cannot be used in making a decision on any immigration application other than the Legalization application itself. As such, the confidentiality provisions aimed to encourage individuals to come forward and apply for immigration benefits without the fear that their previous applications would be used against them in other contexts.

The plain meaning of the confidentiality provision is very clear. Nonetheless, R&A attorneys, who make numerous appearances on behalf of applicants weekly, report that DHS officers at times are not always aware that they are prohibited from using information contained in Legalization applications to make determinations on subsequent applications. It has also been reported that officers attempt to discuss the Legalization application in a roundabout manner, such as by questioning the applicant

about past fraud, then later charging the immigrant with misrepresentation under Section 212(a)(6)(C)(i) if the INA.

Legalization for individuals who applied under the Seasonal Agricultural Worker (SAW) program also benefit from confidentiality provisions. Under INA Section 210(b)(6), similar confidentiality provisions to those benefiting other legalization applicants are enumerated. Protection for SAW applicants goes a step further: a violation of the confidentiality provision can result in a criminal violation, with fines of up to \$10,000. It is important to note that there exists an exception to the confidentiality provision: if a duly recognized law enforcement entity, in the course of an investigation or prosecution or to identify a deceased individual needs to use the information contained in the SAW application, the government can use information contained in some previous applications.

While criminal proceedings were not brought against a DHS officer for a violation of the confidentiality provisions in one published decision of the Administrative Appeals Office (AAO), the use of a Legalization application was deemed improperly used. The August

29, 2007 decision (name redacted), involved an individual who applied for Legalization under the SAW program in 1990. Thereafter, the same applicant applied for permanent residency pursuant to his marriage to his US citizen wife. Subsequently, the DHS office informed the applicant that he is inadmissible due to alleged fraud in his 1990 Legalization application, and that he required an approved a waiver of inadmissibility. In his letter requiring the waiver, the officer stated that the applicant's prior permanent resident status under Section 210 of the INA contained elements of "fraud and/or misrepresentation," and that the applicant is therefore "excludable under section 212(a)(6)(C) [of the INA]."

The applicant's attorney submitted a legal brief arguing that the officer made his finding based on the Legalization application, and that the use of such information is impermissible under Section 210 as no criminal proceedings against the applicant had ensued. The AAO agreed, and found that information contained in the SAW application could not be used by the officer, and that as such, no inadmissibility ground exists warranting a waiver. The

appeal was sustained, and the confidentiality provisions were properly upheld.

Many individuals, having filed for Legalization in the past, continue to fear coming out of the shadows due to information contained in a previous application. Certainly, this is a reasonable fear. However, it is crucial that prior immigration files are carefully examined by an immigration attorney and that the facts of the case are examined in light of the confidentiality provisions. With the assistance of experienced counsel, an applicant may overcome any adverse inferences contained in their legalization applications.

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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)

Wells Fargo eliminates remittance transfer fees to Philippines for families and friends affected by Typhoon Ketsana

Wells Fargo donates \$100,000 to American Red Cross

SAN FRANCISCO, Sept. 29, 2009 – Wells Fargo & Company (NYSE: WFC) —with its remittance network member Bank of the Philippine Islands (BPI) – is temporarily eliminating all remittance transfer fees (normally \$5 or \$7) for customers sending money using the ExpressSend service to friends and family in the Philippines impacted by Typhoon Ketsana (also known as Typhoon Ondoy). The fee waiver is effective September 29 through October 12, 2009.

Wells Fargo also is donating \$100,000 to the American Red Cross for relief efforts.

"Our hearts go out to all those who have been impacted by the typhoon," said Daniel Ayala, head of Wells Fargo's Global Remittance Services Group. "We're working closely with the Bank of the Philippine Islands to help our

customers support their families and friends as they begin the recovery process in the Philippines."

ExpressSend customers can send up to \$3,000 a day for \$5 if originated from an eligible Wells Fargo account (or \$7 if originated from cash). The fee will be waived September 29 through October 12, 2009. Recipients can claim their funds at more than 800 branches and 1,500 plus ATMs throughout the Philippines.

"Bank of the Philippine Islands sympathizes with and shares in the plight of the victims of Typhoon Ondoy (international name is Typhoon Ketsana)," said Terecita Tan, SVP and Group Head, Overseas Banking and Channel Services for Bank of the Philippine Islands. "With the temporary fee waiver, we encourage our Filipino kababayans overseas

who wish to donate to the flood victims to remit through BPI and Wells Fargo."

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tribution, and foreign exchange business. BPI is the recognized leader in electronic banking, having introduced most of the firsts in the industry such as the automated teller machines (ATMs), a point-of-sale debit system, kiosk banking, phone banking, internet banking, and mobile banking. It has the largest distribution network of over 800 branches and 1,500 ATMs.

BPI has the largest market capitalization in the industry and the highest credit ratings from international rating agencies.

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