

YOUR IMMIGRATION SOLUTION



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The widow penalty

A SPOUSE'S death is an unspeakable tragedy for the grieving widow or widower. However, surviving immigrant spouses can face legal problems in addition to the grief of losing a close family member.

A common fact pattern involves an individual who enters the United States under a fiancé visa ("K-1") and marries his or her US citizen spouse. At this point, the individual has become an "immediate relative" of the US citizen and is eligible to file for a Green Card (adjustment of status). Once an application is filed and approved, the individual becomes a conditional permanent resident. Within the 90 day period prior to the expiration of the conditional Green Card, a conditional resident can file a petition to remove the conditions thereby obtaining a permanent Green Card. But, what happens if the individual's US citizen spouse dies during the two-year conditional residence period or while the Green Card Application is pending?

Unfortunately, Federal Regulations require the revocation of

an approved visa petition upon the death of the citizen petitioner if the beneficiary has not been granted a Green Card or Immigrant Visa. Consequently, under the government's current interpretation of immigration law, a conditional permanent resident faces deportation from the United States when his or her US citizen spouse dies within two years of their marriage if (1) their immigrant visa petition (I-130) has not been adjudicated by the United States Citizenship and Immigration Services (USCIS) or (2) if no visa petition was ever filed. This phenomenon is known as the "widow penalty."

So, what is the best approach for an immigrant in this horrible position? The answer to this question largely depends on where he or she lives. If the immigrant lives within the geographical limits of the First, Sixth, or Ninth Circuits, he or she is currently protected by recent federal court decisions holding that a visa petitioner's death does not end a surviving spouse's eligibility for classification as an "immediate relative" (defined, in this case, as a US citizen's spouse). As such, USCIS should approve visa petitions and adjudicate applications filed on behalf of spouses of US citizens who reside in the First, Sixth, or Ninth Circuit re-

gardless if the citizen petitioner passed away before the petition or application was filed. It is important to note that the aforementioned decisions apply only

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to cases involving visa petitions filed for the spouses of citizens. Consequently, these cases do not apply to visa petitions filed for a citizen's step-child.

If neither the US citizen petitioner nor the alien beneficiary resided in the First, Sixth, or Ninth Circuits at the time of the citizen petitioner's death, a number of options remain. If an immigrant visa petition was approved prior to the US citizen's death, the surviving spouse may be eligible for humanitarian reinstatement of their approved petition. If this request is approved, the spouse may apply for adjustment of status.

Alternatively, if a visa petition or application to adjust status was pending at the time of the citizen's death and the couple was married for less than two years, the alien may request deferred action on his or her application. Similarly, those individuals who have had visa petitions denied due to the death of their US citizen spouse or who have

not filed a visa petition prior to the death of their citizen spouse are eligible to apply for deferred action. Applications for deferred action require the filing of a specially formatted petition along with extensive documentary evidence and legal briefing. If deferred action is granted, the alien becomes eligible to live and work in the US for two years after the date of approval.

Those who lose a spouse suffer an incalculable loss. Unfortunately, the government's harsh interpretation of our immigration laws makes the death of a spouse even tougher on immigrant spouses of US citizens. As seen above, the law in this area is complex and unsettled. If you, a family member, or a friend fears becoming a victim of the "widow penalty," we encourage you to seek the assistance of an experienced immigration attorney.

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)

Las Vegas boulevard designated a National Scenic Byway

Boulevard recognized for its cultural, historic and nighttime scenic amenities

LAS Vegas Boulevard, from Washington Avenue to Sahara Avenue, has been designated a National Scenic Byway, the culmination of a 9-year effort by the city of Las Vegas. This designation will enhance the city's ability to apply for federal grants to add more neon signs along the corridor. The Federal Highway Administration will also include Las Vegas Boulevard in all its marketing campaigns for the Scenic Byway Program.

In order for a roadway to be designated, it must qualify by having at least one of the following intrinsic qualities: archeological, cultural, historic, natural features, recreational or scenic. It also must have an adopted Corridor Management Plan and have been designated a state scenic byway. The cultural, historic and nighttime scenic amenities qualified Las Vegas Boulevard. However, the primary factor was due to the large amount of neon signage found along this stretch of the boulevard.

The city began its effort in 2000 to see this stretch of Las Vegas Boulevard become a National Scenic Byway. The state of Nevada designated downtown Las Vegas Boulevard as the state's 17th scenic byway on Nov. 28, 2001. With this designation, the city was able to apply for and receive a \$25,000 federal grant to develop a Corridor Management Plan outlining how the intrinsic qualities would be protected. With the communities' involvement, this plan was adopted by the City Council on April 7, 2004. One of the goals outlined in the plan is to restore and place up to 20 historic neon signs in the median. It also called for the protection of existing neon signs and a mechanism to encourage additional neon signs in the future. The recent addition of the Horseshoe Hotel/Casino, Silver Slipper Hotel/Casino and Bow & Arrow Motel signs contribute to the scenic byway as will future signs.

The city has formed a partnership with the non-profit Neon Museum in order to finish a joint Scenic Byway/Neon Museum Visitor Center in the restored La Concha at 700 North Las Vegas Boulevard. An \$809,000 National Scenic Byway grant is helping to fund this project. Congress sets aside upwards of \$40 million annually to fund projects located along the nation's scenic byways. The federal designation will enhance the city's grant applications in the future.

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Experience October magic at the Fall Festival and Centennial Hills Day

Free event to offer old fashioned family fun

EXPERIENCE the magic of October at the Fall Festival and Centennial Hills Day on Saturday, Oct. 24, from 11am to 1pm at Centennial Hills Park located at Buffalo Drive and Elkhorn Road. Dress the kids up in costume and join the free fun, including a jump house, deejay, face painting, balloon artists, Halloween photos, games and more.

The Las Vegas Farmers' Market will offer fresh regional produce and other goodies for sale from 11 a.m. to 3pm. A collection point will be set up for old cellular phones to be donated to the Cell Phones for Soldiers Program.

"The Fall Festival and Centennial Hills Day is a blast," Ward 6 Councilman Steven D. Ross said. "October is the perfect time for residents to come out to enjoy some old fashioned fun and really experience what our community offers."

The city of Las Vegas has many events and facilities that offer a wide range of activities for residents to enjoy. For more information, visit the city Web site at www.lasvegasnevada.gov.

Las Vegas residents invited for coffee, tea and conversation with Councilman Barlow

WARD 5 City Councilman Ricki Y. Barlow would like to invite residents to join him for coffee, tea and conversation about the community from 9 to 10am on the first Thursday of every month. The upcoming Ward 5 gathering is planned for Thursday, Nov. 5, at the Starbucks at 751 N. Rancho Drive. It will give residents the opportunity to speak directly with the councilman on issues of concern to them.

Councilman Barlow has been working diligently to attract new businesses within Ward 5 and to get neighborhoods organized and involved. He is strongly ad-

vocating an historic, proud, progressive Ward 5 movement.

The location for the Ward 5 gatherings alternates monthly between the Starbucks at 751 N. Rancho Drive and the Starbucks in the Best of the West Shopping Center located at 2192 N. Rainbow Blvd., Suite 100. The next gathering will take place on Dec. 3.

For more information, citizens can call Councilman Barlow's office at 229-5443 or visit the city's Web site at www.lasvegasnevada.gov/ward5 to learn more about what's happening in Ward 5 and the city of Las Vegas.

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