



ATTY. MICHAEL GURFINKEL

IN two recent decisions, the Administrative Appeals Office (AAO) held that when an alien was not given an adequate definition of a drug crime, including all essential elements, any admission or confession by that alien of the crime could not be used against him for immigration purposes. This is great news for people who were refused their visas due to admitting drug use during their medical exam at St. Luke's, Manila. If they did not receive an adequate definition of the crime, or warning about the consequences of admitting drug use (which is a lifetime ban), there may still be hope!

By way of background, in 2002, the Ninth Circuit Court of Appeals, in *Pazcoguín vs. Radcliffe*, held that an alien could be banned for life for admitting, to the doctors at St. Luke's, that the alien had "used" drugs in the past. The ban applied even if the alien was never charged or convicted of any drug crime, and even if his drug test turned out to be "negative." The lifetime ban results from the alien's mere admission to the doctor or psychiatrist, of the use of marijuana or some other prohibited drugs in the past, even if the use occurred many years ago. Thus, people petitioned by US citizen spouses, other relatives, employers, etc., and had waited years for their petition to be current, found themselves banned for life, when the doctors asked if

New hope for people who 'admitted' drug use to doctors at St. Luke's

they ever tried marijuana or other drugs at any time in their life, and they said "yes."

The AAO disagreed with the Ninth Circuit's reasoning in *Pazcoguín*. First, the AAO held that because the alien's residence was in the Philippines, and not the Ninth Circuit (which encompasses the western states), the *Pazcoguín* case was not controlling authority, and the AAO was not bound by the 9th Circuit's ruling outside of the Ninth Circuit's jurisdiction.

Second, the AAO stated that AAO "conducts the final administrative review and enters the ultimate decision for US Citizenship and Immigration Services (USCIS) on all immigration matters that fall within its jurisdiction." Therefore, it would be the AAO, not the Ninth Circuit, that would have the "final say" in cases arising outside the jurisdiction of the Ninth Circuit.

Third, in a decision by the Board of Immigration Appeals (BIA), *Matter of K*, the BIA held that the "validity" of an admission (or confession) for purposes of inadmissibility, required that the alien "be given an adequate definition of the crime, including all essential elements, and that it be explained in understandable terms." The reason for this rule is to ensure that, "the alien would receive fair play and to preclude any possible later claim by him that he had been unwittingly entrapped into admitting the commission of a crime involving moral turpitude." Also, it must be explained in plain English.

In these recent AAO cases, (one

involving a petition by a US citizen spouse, and the other a petition by a parent), the applicants admitted to drug use only during a medical/psychiatric examination at St. Luke's, in connection with immigrant visa processing. There was no evidence showing that the applicants were provided with an adequate definition of any crime. Further, the applicants were never charged with, or convicted of, any illicit drug crime.

The AAO further noted that the St. Luke's doctors and psychiatrists who obtained the admission or confession about drug use, "did not provide the petitioner with a definition of a crime to which he was admitting the essential elements." Thus, no adequate warning was given to the applicants. Accordingly, under *Matter of K*, that admission or confession of drug use could not be used against the applicant.

Moreover, the AAO noted that doctors and psychiatrists at St. Luke's perform "examinations for the benefit of the US government to determine if grounds exist that render aliens inadmissible to the US." Therefore, there is no reason why the St. Luke's psychiatrists or doctors should be exempt from providing adequate warnings or definitions of crimes, especially when the admission they obtained would later be used by the

Embassy to ban the visa applicant for life for admitting drug use.

The AAO concluded that, "the evidence in the record is insufficient to support a finding that the applicant is inadmissible." Therefore, the applicant's waiver application "is unnecessary."

If you or your relative were banned for life for admitting drug use, these AAO decisions are great news. I strongly suggest that you seek the advice of a reputable attorney, who can evaluate your situation, and hopefully help lift the lifetime ban (for admitting drug use) because the admission or confession of drug use was not properly obtained.

Michael J. Gurfinkel is licensed, and an active member of the State Bar of California and New York. All immigration services are provided by, or under the supervision of, an active member of the State Bar of California. Each case is different. The information contained herein (including testimonials, "Success Stories," endorsements and re-enactments) is of a general nature, and is not intended to apply to any particular case, and does not constitute a prediction, warranty, guarantee or legal advice regarding the outcome of your legal matter. No attorney-client relationship is, or shall be, established with any reader.

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(Advertising Supplement)

A family's reunion after 17 long years, on this Sunday's 'Citizen Pinoy'

REDWOOD CITY, CA—The Malabed children—Joanne, Jean, James, Joseph and Judith—had a wonderful childhood growing up in the Philippines. Eventually, Jean was able to take her medical practice to the United States, and she then started a new life away from her family.

Bernard—the octogenarian patriarch of the Malabed family, was a veteran of World War II, and by virtue of this, was able to come to the US in 1991, and granted US citizenship shortly thereafter. He filed a petition for his remaining children in the Philippines. His wife, Gloria followed him to the US to be with him too.

Years passed, and while the family patiently waited for their petitions to come through, Bernard and Gloria's health started to deteriorate. Bernard underwent triple by-pass surgery, and then he also suffered a stroke. Gloria was discovered to have cancer. It was a very difficult and trying period for the family. Aside from the fact that they were far apart, they were also uncertain

as to the outcome of the pending petitions of Daddy Bernard for the remaining children who were still in the Philippines. Their father's deteriorating health was cause for worry, because if anything happened to him while the petitions were pending, then the petitions could also "die."

Time was running out, and Jean and her parents were trying to figure out the best way to get her siblings to the US soon. A realization hit her, when she considered getting the services of the Law Offices of Michael Gurfinkel. Jean debated in her mind the pros, cons, and costs. She realized that the fees for the leading US immigration attorney could be high, but she also considered the benefits—the peace of mind in the knowledge that everything will be done so that their family can be reunited sooner than later.

This Sunday, meet the Malabed family, and learn about their story of faith and hope, when they join "attorney-of-last-hope" Michael J. Gurfinkel, on the most

Continued on Page 7

Doña Buding is coming to America!

By LOU CABALDE

WHO would ever forget Doña Leonila Evaporada viuda de Ford? Or better known as the glamorous and snobbish Doña Buding. In 1983, we were all introduced to the classy and wealthy character of Nanette Inventor in a social satire portion on Channel 7's *Penthouse Live!* that made all of us laugh our hearts out!

From then on, Nanette Inventor and Doña Buding have been synonymous with each other and the rest was history.

A multi-faceted performer, a singer, comedienne, host, commercial model and an actress, this is Nanette Inventor rolled into one. She has been making everyone laugh for more than two decades. For Nanette, performing and making everyone laugh has always been her love and passion.

Nanette was a part of the UP Concert Chorus and this was where her music career started. She later on, became a back up

singer and did TV commercials, voicing for radio and jingles. Nanette's big break was when she won at the 7th Metro Manila Popular Music Festival where she sang Gary Granada's *Salamat Musika* and after that she released an album entitled *Sumpung* under Universal Records.

As a theater actress, Nanette has performed in *Menopause*, *The Wiz*, *Noli Me Tangere*, *El Filibusterismo* and *Separasyon*, a play by Lito Casaje that won a Palanca award. She has done countless films and was honored a Best Supporting Actress nomination for *Multo in the City*. Nanette was also a regular on TV shows such as *Por Kilo*, *In the Money* and *Abangan ang Susunod na Kabanata* and would frequently appear on TV drama anthologies, TV specials, and TV ads.

Over the years she has worked with fellow comedians Mitch Valdes, Tessie Tomas, Leo Martinez, Jon Santos, Fe Delos Reyes, Bernardo Bernardo and Arnel Ignacio,

Continued on Page 7

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Written and performed by Stephanie Reese for the benefit of Gawad Kalinga, a global effort that raises money to build homes and communities for poor families in the Philippines.
Executive Producers: Sylvia Cancio, Pete Domingo, Shirley Domingo Line Producer: Elton Lugay

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