

IMMIGRATION CORNER



ATTY. MICHAEL GURFINKEL

In some cases, a person may go to the US Embassy for a visa interview, based on an approved petition (whether it is a non-immigrant petition, such as H-1B, an employment-based case, such as for labor certification, or a family-based petition.) However, the Consul may uncover information or documents, showing that the person is not entitled to the particular benefit applied for (i.e. the Consul may have uncovered fraud, a secret marriage, the petitioner has died, the alien does not appear qualified for the visa, etc.)

By law, since it was US Citizenship and Immigration Services (USCIS) that approved the petition, the Consul does not have the authority to revoke the petition. Instead, the Consul must return the petition to USCIS for revocation. The procedure for the Embassy to return petitions to USCIS for revocation includes the following:

The Consuls must use Form DS-3096 as the "cover sheet," indicating the type of petition, and checking a box on the form, listing the reason the Consul believes the alien is not entitled to the visa.

The Consul must also prepare a memorandum or "comprehensive report" to the USCIS, explaining in detail the reasons why the beneficiary appears not to be entitled to the requested status.

The report, "must be comprehensive, clearly showing factual and concrete reasons for revo-

Returning petitions to USCIS for revocation

cation. The report must be well reasoned and analytical rather than conclusory. Observation made (by the consular officer) cannot be conclusive, speculative, equivocal, or irrelevant." In other words, in returning a petition for revocation, the consul must have specific, detailed facts, as opposed to a mere hunch or "gut feeling" about the alien.

The Consul must send the petition, Form DS-3096, and the comprehensive memorandum to the NVC's Fraud Prevention Manager. The NVC will then send the documentation to the USCIS office that approved the petition.

The Embassy is to "retain a

copy of the petition, the supporting documents and the memorandum."

Unfortunately, when a consul returns a petition to USCIS for revocation, it could sometimes take a year or more for USCIS to act on the case. Typically, the procedure is that once USCIS finally reviews the case, they send a Notice to the petitioner or beneficiary, giving them a chance to respond, or offer proof of the alien's eligibility. But again, this could take a year or more before that happens.

But there are other provisions of the Foreign Affairs Manual that state that Consuls should re-consider a previous refusal,

if the applicant provides, within one year of the refusal, additional persuasive evidence demonstrating entitlement to the benefit. Moreover, because the Embassy is to retain a copy of the petition and supporting documentation, the Consul would still have the case and the file available to him, if grounds exist for reconsideration.

That is why it is so important that if you are not entitled to a particular benefit, or no longer entitled to that benefit, you should not apply. But if you believe you are eligible, and were refused because of some miscommunications, misunderstandings, or your inability to properly prove

or document your eligibility for the visa, I would strongly suggest that you seek the advice of a reputable attorney, who can evaluate your situation and advise you on the best course of action, whether it is seeking reconsideration from the Consul, or waiting to respond to a future notice from USCIS.

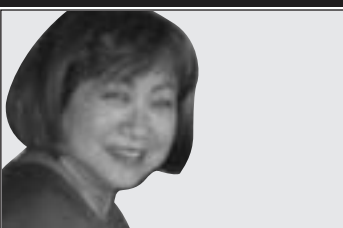
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IMMIGRANT LIVING: 101 AND BEYOND



MONETTE ADEVA MAGLAYA

(Primarily because the good life based on the American Dream is fast fading from the realm of what is possible for many immigrants, I am reprising this article to remind us that despite all appearances, there's still a lot we can do to affect the quality of our lives even during recessionary times. This is partly to counter the increasing tendency of many to lose hope and commit tragic acts of desperation, decimating entire families and themselves, because of financial pressures.)

Do you believe in luck? And if you do, have you got the moxie to be lucky?

On its face value, being in the right place at the right time seems to be completely random and impersonal, much like a lightning strike. We have all heard of the incredible luck of people who have won the lottery multiple times and each time, they at least, bought a ticket, took a chance and made themselves available for Lady Luck to smile at them. Some people modestly attribute their success to luck; others, to

Luck, moxie and the good life

"The harder I work, the luckier I get."
—Unknown

hard work but more than likely, it is a combination of both. They were lucky because they had gumption, persisted against all odds and worked their tails off.

The truth is, in some ways, we can influence good fortune with the attitude, motivation and oftentimes, with sheer moxie, with which we face our individual daily lives. If you expect bad things to happen to you or if you yourself confirm that you are unlucky, more than likely, it will become a self-fulfilling prophecy. You might as well admit it. You're a sad sack Eeyore with a permanent, black rain cloud hanging over your head. The negative energy you emit repels people who would otherwise be of help to you. You just might be the person who can brighten up a room simply by leaving it.

Perhaps, it's your personality and there's nothing you can do about it. You were wired to be negative and pessimistic and no motivational speaker can get you out of that rut. You're one tough customer for the Holy Spirit to work wonders with. Fine. But for as long as you think that you have nothing to do with the ill fortune that seems to bedevil your life, you can just live with the dire consequences of fear, anxiety

and unhappiness which result from being toxic and always believing the worst of things or of people.

Particularly during these uncertain times, no one can afford the luxury of a negative thought. But much more so for vulnerable immigrants who are on survival mode, an optimistic can-do attitude is a must. With this current economic morass, a big chunk of the immigrant population along with many more in the middle class, will regress back to survival mode, quite by default. Many who have moved to more comfortable levels but were caught by the real estate slump, lost their homes and jobs, may find themselves sliding back to square one and engaging in the daunting prospect of finding a job or retraining themselves to learn the skills that will help them find one.

A caveat: Jobs to your liking may be harder to find these days. For many in America and even in many parts of the globe, humble pie will be on the menu, even for those with the best credentials, abilities and track records. Be prepared to wait a long time until the clouds clear and the cadence of our modern lives move to an upswing. There's a cycle and a rhythm to this. As in all fortuitous

events, timing is everything. If you have the moxie to make the right choices, it is amazing to note how luck always dovetails.

Nota Bene: To ask questions, send feedback and requests as well as to inquire about advertising in any or all of the 6 print editions of Asian Journal in California, Nevada and New York/New Jersey and/or advertising in the Print Edition Online of Asian Journal, e-mail monette.maglaya@asianjournalinc.com THANK YOU TO ALL WHO HAVE SENT FEEDBACK.

IMMIGRATION HIGHLIGHTS



ATTY. CRISPIN LOZANO

BORROWERS who are late in payments and seeking loan modifications are given by California Law SB 1137, the ammunition to discuss with their lenders their financial situation to avoid foreclosure. Lenders may file a Notice of Default and start foreclosure process if the borrower is late in payments.

Question: What are the requirements in California before a Notice of Default is filed?

Answer: California law requires all lenders who will foreclose loans made between 2003 and 2008, must at least 30 days prior to filing a notice of default to:

Contact the borrower in person or by phone to assess the borrower's financial situation and explore options in avoiding foreclosure.

The lender must send a letter advising the borrower of their rights to request a meeting in

Pre-foreclosure requirements in California

person with the lender within 14 days, and must provide a toll free numbers for a HUD certified counseling agency.

The lender cannot initiate foreclosure until at least 30 days after contact with the borrower or 30 days following a diligent effort to contact the borrower. Diligence in this case means mailing a notice which includes the lender's toll free number, followed by three phone calls on three different days at three different hours, followed by certified letter return receipt requested.

Question: Who are exempted under the above rules?

Answer: This law does not apply if the borrower has already filed for bankruptcy, has surrendered the home, or has contacted a person or entity whose primary business is advising those who have decided to leave their home, how to extend the foreclosure process and avoid their contractual obligations.

Question: What is one of the best options for a borrower to keep his or her home?

Answer: Loan modification is an option where a borrower can explain his financial situation to

the lender and request reduction in interest rate, extension of the loan term from 30 to 40 years and reduction in principal obligation.

Question: May a homeowner do the modification request himself?

Answer: Yes. Most borrowers who are doing modification themselves find it hard to get through the lender. In many cases they are just given limited reduction in interest rates. There is an advantage of hiring an attorney to do the modification request. Loan modification is a legal process and there are benefits in the negotiation skills of the attorney. The attorney can point our possible violations of lenders under the Real Estate and Settlement Procedures Act and the Truth in Lending Act. These possible violations may give the borrower better deals with the lender to avoid possible litigation.

Question: Who may qualify to loan modification?

Answer: You may qualify if you have any of the following:

Your Mortgage Loan is substantially more than the value of your home.

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