

## IMMIGRATION CORNER



ATTY. MICHAEL GURFINKEL

IN 2006, the Board of Immigration Appeals (BIA) issued an unpublished decision, *Matter of Garcia*, in which the BIA stated that if a child aged out (turned 21) while waiting for the priority date on his parent's petition to become current, then, in certain circumstances, the parent's petition would automatically convert to the appropriate category, and the child would be able to retain his or her parent's original priority date.

In the *Garcia* case, the child was a derivative beneficiary of her parent's F-4 petition (sister/brother). Because it took so many years for that F-4 petition to become current, the child eventually aged out, and was no longer included under the parent's petition. However, the Child Status Protection Act (CSPA), enacted in 2002, contained a provision that

if the age of a child is calculated to be over 21 years of age, "The alien's petition shall automatically be converted to the appropriate category and the alien shall retain the original priority date issued upon receipt of the original petition." In other words, the F-4 petition would automatically convert into an F-2B petition (single adult child of immigrant parent), and the child would be able to retain their parent's original F-4 priority date. Thus, in the *Garcia* case, a "32-year old child" was able to obtain a green card, without having to wait several additional years for the priority date in the F-2B category to become current, because she used her parent's old F-4 priority date.

However, the *Garcia* case was an unpublished decision. But still, the decision was encouraging, because the BIA at least had provided some interpretation or guidance with respect to the "retention of priority date" provision of the CSPA.

As time went by, more cases with similar "retention of priority date" issues arose, and the Department of Homeland Security (DHS) certified one of those decisions to the BIA for review, in order to get a published decision.

On June 16, 2009, the BIA issued a published decision, *Matter of Wang*, regarding the "retention of priority date," and effectively overruled itself, stating that it would "decline to adopt the reasoning in *Garcia*." Instead, the BIA ruled that the only children who could benefit from the retention of priority date are those who were derivatives of a parent's F-2A petition (spouse or minor child of lawful permanent resident), who aged out. Only these children could retain that F-2A priority date on a new F-2B petition filed for them. However, derivative children in other visa categories, such as F-1 (single adult child of US citizen), F-3 (married child of US citizen), F-4 (brothers and sisters of US citizens), or employ-

ment based categories (through labor certification), would not be allowed to retain their parent's original priority date upon aging out.

It is truly disappointing that the BIA would come out with a decision (*Garcia*), allowing the retention of priority dates in all of the family and employment based categories, and then effectively reverse itself, and refuse to follow its previous reasoning, and instead give a very narrow and limiting application of the CSPA.

However, there are similar cases now pending in the federal courts. Let's hope the courts will come to the rescue. There have been many situations where the BIA has interpreted laws or regulations in a restrictive fashion, but federal courts have later ruled that the BIA's interpretations were unreasonable. I think the language of the statute was properly interpreted in the *Garcia* case, and let's hope the federal courts agree.

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## Philippine entertainment's most influential woman in an exclusive and special appearance on Citizen Pinoy season premiere!

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At present, Charo Santos is also the President of the biggest broadcast network in the Philippines—ABS-CBN and also the first woman president of the media conglomerate and is one of the most influential people in entertainment. Charo Santos is very committed to what she has set out to do; and is very compassionate towards her *kapamilya*. It is very fitting to have this incredible woman to be



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the very first featured guest on the new season of *Citizen Pinoy*.

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Of course, more of your immigration questions will also be answered when Atty. Michael J. Gurfinkel brings you an all-new season of *Citizen Pinoy* this Sunday (June 28), at 5:40pm (PST) with a

replay on Wednesday, at 12:15am (PST) on TFC. Be sure to watch this interesting and informative episode.

*Citizen Pinoy* is made possible with the support of friends who are committed to giving back to the Filipino community: *Asian Journal*—with circulation in Northern and Southern California, Nevada, and in the East Coast; and Arko Foods. *Citizen Pinoy* is also supported by ABS-CBN Global's key product offerings: Star Kargo, Stary Stary Store, ABS-CBN Telecom and TFCDirect.

Informative. Entertaining. Inspiring. Watch *Citizen Pinoy*—the Filipino-American community's immigration program every Sunday at 5:40pm (PST), with replays on Wednesdays at 12:15am (PST) on TFC. *Citizen Pinoy* also airs on ANC-US every Sunday at 12am with replays on Sundays at 8am and Thursdays at 7pm, all PST; and on ANC- Philippines every Sunday at 4pm with replays at 12 midnight on Mondays.

## IMMIGRANT LIVING: 101 AND BEYOND



MONETTE ADEVA MAGLAYA

IF YOU want anything done, give it to a busy person. But perhaps, this is true only up to a point. One's carrying capacity can be maxed out. Anyone who is both efficient and effective has mastered many times by trial and error over some length of time that fine blend of mixing the art and science of planning his work and working his plan. How? By thinking things through, prioritizing, sequencing and when necessary, improvising to stay within timetables and resources and keeping a laser-like focus on the goal while keeping your balance. It's a tall order yet doable. Anyone, determined enough, can get things done.

Nowhere is this life skill more put to the test than here in America where a person's worth, whether you like it or not, is measured by his productivity, his creativity, and his results. It is a skill needed to navigate a person's day-to-day life. The major strides in technology have enhanced man's capability to multi-task. Picture the modern version of Everyman running on a treadmill juggling multiple roles. No matter how much you want to buck the system, there is no way you can get around the fact that in order to thrive, let alone survive at this time and in this place, the life skills one needs to acquire and develop some level of competence in, are in the areas of planning and working the plan.

You know what a delight it is to work on a project that has been well conceived and well planned. And when a plan comes together in seamless fashion, everything is as smooth as silk. On the flip side of the coin, you know how aggravating it is to be involved in one that is a mess from the beginning conceived by one who seems to be running around

## Getting things done: A redux

like a headless chicken. History bears out that most of the great leaders of all time, whether in politics, in industry and in business are supreme planners. And contrary to common belief, these planners see the big picture but do not feel that it is beneath them to roll up their sleeves and work on the nitty-gritty themselves. God is in the details. So is the devil.

Planning helps you to see the goal very clearly. Planning makes it possible to signal your intentions to others so adjustments can be made in the early stages of the project. In freeway driving, it is not only courteous to signal your intention when changing lanes to let other drivers either speed up or slow down to make room for your move, it is the safe and prudent thing to do. Planning, like your left and right turn signals on your car, is a communication tool that gets feedback from within the team.

Henry Ford, who had a hand in perfecting the assembly line production technique once said, "Nothing is particularly hard if you divide it into small jobs." As you flesh out the details of a project, the number of sub-tasks and the sequence with which these smaller tasks need to be done becomes clearer. Assigning who does what further breaks down the job to smaller and manageable bite sizes. Of course as the overseer, your task is to monitor progress of each component of the project and see that each one contributes to the overall goal. Inspect what you expect. Never assume. Ultimately, the value of planning brings you full circle as it helps you stay focused on the goal and get the job done on time and within budget. Getting things done and looking back at a job well done is gratifying for it somehow validates your self-worth.

Here's a caveat. Lest we think that planning is foolproof, remember that "The best laid plans of mice and men often go awry." Even with all the seemingly perfect planning that brainiac scientists at NASA do and even with the use of cutting edge technol-

ogy, the agency still experiences monumental failures—sometimes.

Things may not work out as planned. Consider the recent tragedy of the Air France plane crash over the Atlantic where no one survived. All told, 228 lives were lost. That flight was the result of expert plans that worked over and over in the past. It will be some time before aviation experts figure out exactly what went wrong on what could have been a routine flight from Rio de Janeiro to Paris. They say a small Airbus part, called the Pitot tube responsible for reading the plane's speed iced up and malfunctioned giving wrong readings of air speeds, as it flew directly into the belly of a severe thunderstorm and was never heard from again as it broke apart and plunged to the Atlantic. Sometimes you wonder if given all the sophisticated modern technology at our disposal, we should still have the option of a manual override for human operators of machines thrust in dire emergency conditions.

There are absolutely no guarantees that something will work out because of a great plan. Man proposes, God disposes. There will be curve balls thrown in our path. When things don't work out as planned, try to accept it. Perhaps, there is a much better plan from a higher frequency and perspective. This is when you go deep inside and plumb the depths of your being and ask for the inner strength to accept things humbly. For the most part however, it has been proven that unless mighty cosmic forces are conspiring against something from happening, chances are stacked heavily towards transforming an idea to reality because of the simple act of planning and tenaciously working the plan.

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