

Resurrecting the Dead: Humanitarian Reinstatement of I-130 Petitions

PROTECTING RIGHT & \$



ATTY. JOEL R. BANDER

THE long waiting time for immigrant visa processing is an issue of important interest to Filipinos. The Philippines is one of the countries with the highest numbers of immigrants in the United States and longest waiting time period for immigrant visa processing. While visa numbers are immediately available to spouses, parents, and minor children of US citizens, other relatives of citizens and immigrants generally wait several years ranging from 5 to 22 years before they could immigrate into the United States.

A serious problem posed by the lengthy visa processing is the possibility of losing the petition when the petitioner dies before the beneficiary is granted the visa. Under the regulations, when the petitioner dies, an approved I-130 petition is automatically cancelled by operation of law. Thus, even if the petition has been approved and the beneficiary is only waiting to receive the immigrant visa, the petition automatically dies with the death of the petitioner.

However, this problem is ameliorated by an exception provided by the regulations that allows the US Citizenship and Immigration Services (USCIS) to grant discretionary reinstatement of "dead" I-130 petitions based on humanitarian reasons. To qualify for reinstatement, the petition must have been approved prior to the death of the petitioner. To invoke this benefit, the principal beneficiary of the visa petition has to request for reinstatement of the approval of the petition and establish that a substitute sponsor is willing to file an affidavit of support and the particular circumstances of the case warrant the reinstatement of the petition.

The substitute sponsor must

either be a citizen or national or a legal permanent resident who is at least 18 years of age and have a domicile in the United States. A spouse, parent, mother-in-law, father-in-law, sibling, child at least 18 years of age, son, daughter, son-in-law, daughter-in-law, sister-in-law, brother-in-law, grandparent, or grandchild of the beneficiary may qualify as a substitute sponsor.

There are no clear rules as to what the USCIS must look at in exercising this discretionary authority. However, there is a clear intent that this authority should be used in those cases where revocation would be clearly contrary to the furtherance of justice. The following factors have been considered:

- (1) Disruption of an established family unit;
- (2) Hardship to US citizens or lawful permanent residents;
- (3) If beneficiary is elderly or in poor health;
- (4) If beneficiary has had lengthy residence in the United States;
- (5) If beneficiary has no home to go to;
- (6) Undue delay by DHS or consular officer in processing petition and visa; and
- (7) If beneficiary has strong family ties in the United States.

It is worth emphasizing that there is no appeal from a denial of a request for reinstatement. Hence, if one believes he or she has a good case for reinstatement, it is very important to ensure that the request is properly and completely done. It is always advisable to consult an immigration lawyer for guidance.

Atty. Joel R. Bander is the partner of Bander Law Firm, LLP. With over 15 years of litigation and immigration experience, Mr. Bander is a leading litigator and accomplished trial strategist. He has successfully handled numerous cases before Federal, State, Civil, and Criminal Judges and has participated in hundreds of arbitrations and trials.

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(Advertising Supplement)

HOMEOWNERS' HIGHLIGHTS



ATTY. CRISPIN LOZANO

LAST week we received several offers of Loan Modification from different banks. Some are in compliance with the Obama plan while others are not. In one offer, we received a reduction in payment of about \$1000 from the original mortgage payment. They based the new monthly payment on the gross income of the spouses multiplied by 31 percent. The resulting mortgage payment of \$2,475 includes property tax and home insurance of \$850.

The offer from another lender is a choice of three monthly payments which reduced the interest rate from 8.94 percent to 4 percent resulting in a reduction in monthly payment from \$4,770 to \$2,000 or a reduction of \$2,770. The lender is not a participant in the Obama plan.

Someone consulted me showing me a loan modification prepared by a foreclosure consultant that increased his monthly payment by \$200. He asked me if he should sign it, and I said no way. The purpose of loan modification

is to reduce monthly payment and yet this one will increase your payment. I told him that he should go back to the lender and ask for the loan modification that follows the Obama plan.

Question: If the lender's first offer of loan modification is a small reduction in monthly payment, do I have to accept it?

Answer: No. If you can explain to the bank that you cannot afford the monthly payment they will make a second or third offer. Loan modification is negotiation. The bank will always offer you a small amount of reduction if you do not know how to negotiate. However, you need an attorney whom you can talk to if you are near foreclosure because the bank may foreclose your property and you may not know your rights. You need the necessary tools to negotiate such as a finding of predatory lending based on loan audit.

Question: What is the best time that I should contact an attorney?

Answer: The best time to contact an attorney is when you start the loan modification process. You can get more reduction if you negotiate early because you are not pressured for time to ac-

cept their first or second offer. In addition, you have more time to secure an audit of the loan so that you can bargain for reduction in principal if there are federal law violations and predatory lending. You should be able to see your attorney and talk directly to him or her about your case because your home, your most precious asset, is at stake. Your attorney should communicate with you and be reachable when you have questions.

Question: May I contact an attorney-based Modification Company about the notice of default?

Answer: An attorney-based modification company does not have the ability to immediately act on your legal problem because they will have to consult the matter to their contracted attorney. At a Law Office, you can speak face to face directly and immediately to an attorney who can advise you of your options.

Question: Will filing of Chapter 13 bankruptcy stop foreclosure?

Answer: Chapter 13 bankruptcy will temporarily stop foreclosure. Once the debtor is discharged, the lender will proceed with the foreclosure if the debtor is still late on his monthly

payments.

Question: Can a homeowner apply for loan modification after a debtor is discharged in Chapter 13 bankruptcy?

Answer: Yes. However, it is better to apply for loan modification before filing Chapter 13 bankruptcy because you have a better chance of getting better terms in modifying your loan. Once you filed for bankruptcy and still you cannot pay your mortgage after your discharge, you have lesser chance of getting the best terms of modification.

Note: This is not a legal advice. You need to talk to an attorney about your case. Our office offer FREE initial consultation on Loan Modification only.

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LEGAL RIGHTS



ATTY. JOHNSON LAZARO

Part 2

THE homeowner is allowed certain legal rights when faced with the issue of foreclosure.

An individual may defend his or her property in one of two ways. Either the individual may defend the property through "Judicial Foreclosure" or through "Foreclosure by Sale."

Each of these defenses will allow the individual a set time where he or she must pay off the debt of the mortgage. If repayment does not appear to represent a feasible option, "Fore-

Foreclosure made simple

closure by Sale" will allow the individual the possibility to break even (or profit, in rare cases).

The options when facing a foreclosure are limited and both procedures are extremely complicated. Individuals will also face additional court and lawyers fees which will cost more money out of your pocket.

However, you should never enter a foreclosure case without a lawyer. The number of deadlines and stipulations covered in a foreclosure hearing are best handled in the hands of a professional. Lawyers also allow individuals the greatest chance of reclaiming their home because they understand all the legal options and best ways of handling a particular situation.

The plaintiff (bank, lender, etc) starts the foreclosure lawsuit by ordering a marshal to serve a "Summons and Complaint" to the defendant (the owner or borrower of the property).

In the upper right hand corner of the "Summons and Complaint" is a date. It's referred to as the "return date." The "return date" is not a hearing date (the individual does not need to go to court) but is a reference point for when papers must be filed with the court.

The homeowner should file an "Appearance." The "Appearance" simply tells the court that you are not ignoring the foreclosure and you can obtain the form at the Superior Court clerk's of-

fice or on the state's judicial web site (www.jud.state.ct.us). Keep in mind that an "Appearance" is not required, but it will prevent the foreclosing lender from proceeding with the case, so generally it is highly recommended.

The plaintiff must state in the "Summons and Complaint" the individual's right to apply for protection from foreclosure if the individual is unemployed or underemployed. If the homeowner meets requirements for "unemployed or underemployed," the individual may apply to the court within 25 days of the "return date."

Aside from the "unemployed or underemployed" clause, the homeowner is allowed 15 days or more depending on the state you reside in after the "return date" to send an "Answer" to the complaint. Read the "Summons and Complaint" carefully. Decide whether you agree or disagree with the complaint. Make sure the "Answer" is specific stating whether or not you agree with every paragraph. Never state you agree with a paragraph you do not understand or completely agree with.

Example: The complaint alleges you have not paid the mortgage in seven months, but you believe you've not paid in four months. You will state in the "Answer" that you disagree with that allegation.

Also, include any defenses to the foreclosure in the "An-

swer." File the "Answer" at the Court Clerk's office and send a copy of the file to everyone else who filed an "Appearance" in the case (you'll receive a list of all these individuals from the court).

Never send the "Answer" before adding a "certification of service." The "certification of service" will certify that the individual mailed copies of the "Answer" to everyone who has appeared in the case. Sign the certification separately from the signature on the "Answer."

Next week, we'll study the definitions of "Strict Foreclosure" and "Foreclosure by Sale," and which one makes more sense for the individual. We'll also do a brief overview on "Judgment," "Ejectment," and "Deficiency Judgment" as relevant to foreclosure.

Always consult a lawyer before entering a foreclosure lawsuit.

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ABS CBN INTERNATIONAL

StarKargo, ABS-CBN Foundation USA join hands for 'Padala ng Pag-asa' promo

Partnership to benefit less fortunate children in RP through Bantay Bata

REDWOOD CITY, CA— StarKargo, ABS-CBN International's one-stop shop for all door-to-door shipment needs from the US to the Philippines, and ABS-CBN Foundation USA has entered recently into a partnership for their Padala ng Pag-asa promo. For every box that StarKargo ships from June 15 until July 31, 2009, StarKargo will donate \$.50 to Bantay Bata, a child welfare program of ABS-CBN Foundation that rescues and rehabilitates abused, sick, abandoned and neglected children in the Philippines.

"It's all about spreading the love and care that goes with every balikbayan box," said Pia Palpal-Latoc, ABS-CBN International's Padala Group product manager. "Our customers work hard to be able to send boxes of goodies and necessities to their loved ones in the Philippines. At StarKargo's cost, we make each balikbayan box shipment help more people by donating a portion of each transaction to the less fortunate children being rehabilitated by Bantay Bata."

"These are difficult times which make our work to support the communities that we serve even more important," said Mitos Santisteban, president of ABS-CBN Foundation USA. "This partnership with StarKargo is a reinforcement of ABS-CBN's commitment to giving back in good times and in bad."

Bantay Bata not only rescues abused and sick children, but also provides shelter, therapy and quality home care until they can be reunited

with their families or referred to proper child-caring agencies. It also gives emphasis on the family through the following services: training and advocacy on child abuse prevention, rehabilitation of families in crisis, educational scholarships, livelihood, community outreach and dental missions.

With its dependable service, competitive rates and prompt delivery, StarKargo has been winning loyal customers. Starting its operations a few years ago in California, Nevada, Illinois, Virginia and Florida, it has grown and expanded to Washington State, Iowa, Missouri, Nebraska, Oklahoma, Michigan, Ohio, Wisconsin, Arkansas, Kansas, Hawaii, New York, New Jersey, Arizona and Texas.

For more information on "Padala ng Pag-asa", please visit <http://www.abscbnfoundation.org/>.

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