Rochester Daily Record

Every Lawyer's Survival Guide to U.S. Immigration Law in 2007

It's not just for immigration lawyer's any more

This is the third of a multi-part series on how the reach of U.S. immigration law increasingly impacts other legal areas, sometimes creating opportunities and, more often, traps for the unwary.

Today's installment focuses on family, specifically marriage-based cases.

Marrying an immigrant: It is happily every after?

By- Stephen M. Brent, Daily Record Contributor
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With enormous numbers of immigrants from all over the world seeking to, and becoming, U.S. residents through family relationships, particularly marriage to U.S. citizens, related issues sprout like wild flowers. This article focuses on one instance when immigration and family law intersect with potentially volatile consequences —— marriage as a ticket to lawful, permanent residency in the United States.

For instance, consider ""Please help me,"" inquires from the U.S. citizen co-ed, Carol, just back from a year studying at the Sorbonne in Paris.

""I met this great guy there, Marcel. He''s stuck in France and I miss him so. Can I bring him here to marry and to live permanently?"" Carol wondered.

Fast forward 20 months later and Carol''s back stateside. She and Marcel married and he received permanent residency. She''s lived with him for a year, working full time while he pursues a masters degree.

Now, however, Marcel has just moved out. Worse, he''s moved in with Carol''s best friend, Joanne. Will the law help her to punt him bacS across the pond? What other immigration-related implications arise?

Situations like Carol''s are common and can impact a family or general law practice at any time. More than 1.1 million people obtained lawful permanent residency status in the United States in fiscal 2005. Nearly 137,000 obtained the status in New York State alone, according to the Department of Homeland Security''s 2005 ""Yearbook of Immigration Statistics,"" the most recent information available.

Marriage is by far the fastest and surest way for an alien to qualify for lawful U.S. permanent residency (or, colloquially, green card status): Of the 1.1 million who received permanent residency in 2005, about a quarter were immediate relatives (spouses, parents and children) of U.S. citizens. Nearly four out of five of those involved spouses. A marriage must be bona fide, not simply used a tool to get a green card. In general, studies have shown such marriages have

about the same success rate as any other marriages.

For Carol to help Marcel obtain green card status when he is aboard, she first files a form I-130 Petition for Alien Relative with the United States Citizenship and Immigration Services (USCIS), the successor to the benefits division of the old Immigration and Naturalization Service. Upon approval of the USCIS, Marcel applies while abroad to a U.S. consular post for his immigrant visa. The entire process generally takes a year or more.

If, however, Marcel is fortunate enough to be in the United States pursuant to a lawful admission as, for instance, with a tourist visa, he may qualify for an adjustment to his status —— consular processing on steroids.

Marcel files an adjustment application, form I-485, concurrently with Carol''s I-130. The immigration service usually adjudicates both at the same time, and often grants permanent residency within 10 weeks.

Either way, there are implications. One is that Carol, as an I-30 petitioner, is required to make a theoretically binding promise in an affidavit of support, form I-864, to Marcel and the government (federal, state and local) to support him to the extent of 125 percent of the Department of Health and Human Services'' poverty guidelines.

The obligation persists, generally, until Marcel works for 10 years (or, technically, 40 qualifying quarters under Social Security law), becomes a U.S. citizen or loses his permanent resident status.

This also means, among other things, that should some government agency extend certain means-tested public benefits to Marcel, that agency has the right to require reimbursement from Carol, even if the marriage goes awry and the parties divorce.

This requirement is designed to protect American taxpayers by putting the I-130 petitioner, in this case Carol, on the hook. It came about as part of the Personal Responsibility and Work Opportunity and Reconciliation Act of 1996, PL 104-193, but is it a toothless tiger?

Recently, Connecticut made headlines when it became the only state to seek reimbursement from sponsors by virtue of affidavits for medical assistance benefits extended to alien beneficiaries. Connecticut sought reimbursement from about 300 such sponsors. When three legal services agencies complained, however, the state''s Attorney General Richard Blumenthal asked the department to back off, pending review of the policy by his office, according to the New Haven Register''s March 3 edition. At the time of this writing, the enforcement initiative is still on hold.

Although on the face of it a U.S. citizen sponsor assumes a considerable risk in filing the I-864, in the real world such risk is low.

If, as is usually the case, the marriage is less than two years old when the alien is granted permanent residency, the law makes the residency grant conditional. That is, the spouses are required to file a form I-751, Joint Petition to Remove Condition, just prior to the second anniversary of the status grant. This gives the government the opportunity to rescind permanent residency grants based on marriages entered into for the purpose of obtaining an immigration benefit rather than to share a life. As a practical matter, the provision makes it more difficult for the alien to retain permanent residency if the U.S. spouse declines to join in the petition;

however, it’’s not impossible because the law provides alternatives.

The alien can request a waiver of the requirement upon proof that he or she entered into the marriage in good faith and the marriage is legally terminated. Alternatively, a waiver is available upon proof that the alien was subjected to physical or psychological battering by the U.S. citizen spouse.

Returning to the hypothetical, can Carol pull the plug on Marcel by withdrawing the affidavit of support? Clearly, the answer is ““no.””

Once Marcel gets permanent resident status the affidavit remains in effect until he works 40 qualifying quarters under the Social Security law, becomes a naturalized U.S. citizen, loses permanent residency or dies. Nothing allows Carol to withdraw it.

Finally, can she prevail upon the immigration service to rescind Marcel’’s green card because he left her? Again, no, unless she has hard evidence that was his intention when he entered into the marriage in the first place. As a practical matter, that’’s virtually impossible to prove.

See the fourth installment of the Immigration Law series in the March 26 edition of The Daily Record.

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