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Tuesday, May 26, 2009

An end to the "widow penalty?"



A court in Massachusetts (Taing v. Napolitano) has held that a woman from Cambodia could continue with her permanent residence application although her US citizen husband died before the paperwork was processed. The US immigration service (CIS) argued that Mrs. Taing no longer qualified as a "spouse" since her husband had died before the case was approved.

This controversial so-called "widow penalty"

has been the subject of many news articles, listed <u>here</u>. The <u>New York Times</u> recently called on the government to end this penalty also.

Mrs. Taing entered the US in 2004. Later that year, she married her late husband and they filed the relevant immigration paperwork. Six months later, Mr. Taing tragically died, before the immigration filings were approved. USCIS denied the permanent residence application, on the basis that Mrs. Taing was no longer a "spouse." The US Court of Appeals for the First Circuit agreed with the Sixth and Ninth Circuit court's views that the plaintiff in this



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About Me



Elaine Martin

Experienced, trusted, creative immigration solutions. Elaine has dedicated her practice to immigration law since 1997. Elaine worked with the world's largest immigration law firm for more than eight years, advising businesses of all sizes, ranging from multinational Fortune 500 corporations to start-up ventures and sole proprietorships. In addition, she was responsible for all individual client casework, providing services in familybased immigration petitions. Elaine brings valuable personal experience and passion

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clS didn't adjudicate the case quickly enough.
Although we rest our holding on entirely legal grounds, we note that our decision comports with common sense. We do not believe that Congress intended for the speed at which immigration authorities attend to a pending application to be dispositive in determining when a surviving spouse like Mrs. Taing, who has diligently followed the rules, can qualify as [a spouse.] As our sister court has recently noted, the result the government seeks would "create [] an arbitrary, irrational and inequitable outcome in which approvable petitions will be treated differently depending solely upon when the government grants the approval." Lockhart, 561 F.3d at 620 (quoting Robinson, 554 F.3d at 371 (Nygaard, J., dissenting)).

Photo by http://www.flickr.com/photos/ninjaneil902/

Posted by Elaine Martin at <u>2:29 PM</u> Labels: <u>marriage-based</u>, <u>widow penalty</u>

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