

BEWARE OF PROCRASTINATION

Gwendolyn Hanford from the Philippines, Khamphée Kells from China and Osserritta Robinson from Jamaica are not celebrities. In fact, they are not very different from any average immigrant who wants to remain in the United States. Yet, their names have appeared in the media. Why might you ask? Because they share a common bond that has attracted the news. Specifically, they are widows of United States citizens, facing immigration problems because their spouses died.

Gwendolyn Hanford came to the United States legally as a fiancé in 1996. She married her United States citizen husband within 2 months of entry. She and her husband welcomed a birth of their son shortly thereafter. While Gwendolyn's green card application was pending, her husband died of a heart attack. In 2002, Gwendolyn's green card was denied because she had not been married to her husband for more than two years at the time he died. Subsequently, Gwendolyn was placed in deportation proceedings.

Khamphée Kells met an American sailor in China and fell in love. They were married shortly after and moved to the United States. After Khamphée filed for her green card, but before it was approved, her husband died in a motorcycle accident. Khamphée's application was denied because she was married less than one year when her husband died.

Osserritta Robinson's circumstances are similar. She was also married to a United States citizen who tragically perished in the 2003 Staten Island Ferry crash. Immigration officials in New Jersey refused to grant Osserritta's green card application because her marriage did not last more than two years at the time of her husband's untimely death.

Gwendolyn, Khamphée, and Osserritta are among 170 widows and widowers who are in the middle of immigration quagmire stemming from losing their spouses. Never mind the pain, heartache, and grief associated with losing your spouse, which alone can be unbearable and devastating, especially when children are involved. These poor women and men, in the midst of their tragedy, are now faced with more problems – problems pertaining to their immigration status in the United States. The U.S. Citizenship and Immigration Services (USCIS) have not been sympathetic to their plight. In fact, it has been the practice of the USCIS to automatically terminate marriage-based petitions of the husbands and wives whose U.S. citizen spouses died while green card applications were pending and the marriage lasted less than two years at the time of death. This practice has been referred to as the “widow penalty,” and it has been applied across the United States, without regard to any evidence of the good faith marriage or humanitarian circumstances.

Ironically, the length of time it takes to have a green card application processed and approved is what matters in the end. Depending where a person applying for a marriage-based green card lives, the processing times can significantly differ from a neighboring state or even an immigration district within the same state. For example, if a foreign spouse married a United States citizen in one jurisdiction obtains her or his green card within 6 months, and then the United States citizen spouse dies before the couple celebrates their second wedding anniversary,

the foreign spouse's green card is not terminated. She or he gets to keep it as long as the marriage was bona fide. But if the same individual resided in another state where it routinely took 24 months or more to approve green card applications, the foreign spouse would be out of luck.

To make matters worse, a number of the spouses subjected to the "widow penalty" have been placed in removal proceedings and/or have had their cases moved through the court system because of the USCIS' decisions to deny their green card. There has not been a uniform approach taken by the appellate courts in dealing with these types of cases, which has also compounded the problem. In fact, the case of Osserritta Robinson, one of the women mentioned above, the Third Circuit Court of Appeals out of Philadelphia recently ruled against her in their February 2, 2009 decision. The Court agreed with the USCIS that Osserritta was not entitled to have her green card approved because she was married less than two years at time of her husband's death. The Third Circuit's ruling is inconsistent with a number of cases coming from the Ninth Circuit Court of Appeals in California, which is why Osserritta Robinson will appeal her case to the U.S. Supreme Court.

Sadly, not every person in Osserritta's situation is able to afford, financially or otherwise, to fight their case in courts. The reality of making ends meet, especially when the USCIS has terminated working privileges, can be daunting and challenging. In the end, it is not certain that the Supreme Court will rule in Osserritta Robinson's favor and she, along with many others in similar circumstances, will face going back to their native countries, leaving behind everything they hold dear, including the ability to visit their spouses' grave sites.

Let the stories of Gwendolyn, Khamphée, and Osserritta be a warning tale. If you are in the position to legalize your status now, but this economic crisis is holding you back, please reconsider. While we are all optimistic that the economy will change and immigration reforms will be passed, there is no way to tell what the future holds. Therefore, please don't delay taking care of your immigration situation through your family members, as their untimely death could destroy the only chance you may have to remain in the United States. Consider investing your savings and/or your expected tax refund in your future in America. It may prove to be the best money you ever spent.