

WHEN THE EMBASSY SAYS NO: HOW IT IS POSSIBLE TO CHALLENGE UNWARRANTED VISA REFUSALS IN FEDERAL DISTRICT COURT IN THE UNITED STATES.

Recently I had the opportunity to re-unite a United States Citizen daughter with her parents who were wrongfully accused of immigrant smuggling. In 1998, the petitioner became a United States citizen and shortly thereafter, filed immediate relative petitions on behalf of her parents and her younger brother.

The beneficiaries arrived at the interview in Manila, naturally thinking that their son (the petitioner's brother) would derive status through them. They were wrong since the dependents of immediate relatives must be separately petitioned by the original petitioner, or by the original beneficiary when eligible to do so.

Instead of informing the parents a separate petition was required for their child, the Consular officer accused the parents of trying to smuggle a non-relative child into the U.S.. He then demanded DNA testing to prove their relationship to their own child. The family went to the approved DNA testing lab and returned to the embassy with the results confirming their relationship to the son.

The beneficiaries were denied their immigrant visas on grounds of alien smuggling. Understandably, the family was shocked. Not only because of the visa denial, but also because of how they were treated. Officers were presented with conclusive DNA evidence of the family relationship and should have known the parents were guilty only of misunderstanding complicated immigration laws. This is an excellent example of circumstances under which a client should go to Federal District court to right a wrong.

And, that's what I did. After filing a complaint, I obtained an Order from a Federal District Court Judge. The United States Department of State was ordered to re-open the immigrant visa process and arrange for new DNA tests to show their relationship to their child. Within a few months my client was re-united with her parents after three years of accusations and denial of their right to enter as legal permanent residents.

The lesson to be learned is that families must be prepared for the worst when they go to consular interviews. If anything unusual occurs, such as unwarranted delays after an interview has taken place, strange requests for DNA or other evidence it is important to address these issues at once.

Immigrants cannot leave unanswered any accusation, challenge or inference by consular officers that there has been an attempt to obtain an immigration benefit through any kind of misrepresentation or fraud. Readers should also note it is very difficult to challenge the decision of a consular officer who under the law has a great deal of discretion in deciding whether persons may be admitted to the United States.

With the passage of time it becomes even more difficult to challenge consular officers' refusal of an immigrant visa. So no matter how poorly you are treated and no matter what the unjustified accusation is, it is crucial that you or your family members seek counsel and challenge the unwarranted denial, or refusal to take action on an immigrant visa.