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Immigration Law Newsletter

July 21, 2008

State Rulings on Homosexual Marriages of No Benefit for Immigration Issues

Recent state court decisions holding homosexual marriages to be valid under state law will not benefit homosexual partners where one partner is a US citizen or permanent resident, and the other is not.

US immigration law considers the foreign spouse of a US citizen to be an "immediate relative." This means that the foreign spouse may apply for a visa without waiting for one to become available under the preference system.

For permanent residents, a beneficiary of a visa petition may bring his or her spouse to the United States as a "derivative beneficiary" and immigrate at the same time. Similarly, a permanent resident may marry a foreign spouse, and file a visa petition under the preference system. Such foreign spouses are in category 2A, and get preference for visas over unmarried children under age 21 of permanent residents and married children and siblings of US citizens.

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Immigration Problems Hit Celebrities Too

In two recent cases, celebrity singers were denied US visas, thus highlighting the US Government's enforcement-driven attitude toward immigration law.

Pop singer Amy Winehouse was denied a visa despite the fact that she was nominated for a Grammy Award. The denial was due to her problem with drug abuse.

Similarly, 1980s pop singer Boy George was recently denied a visa because of criminal issues in his home country of England. The US Government denied the visa even though Boy George had a North American tour scheduled.

High-profile cases like these show the Government's impartiality; the grounds of inadmissibility apply even to the famous.

These cases best serve as a reminder of the Government's get-tough attitude toward immigration issues since 9/11. Visa applicants would do well to be prepared for this enforcement-driven attitude whenever dealing with the Federal Government. ■

Permanent Resident Travel Issues

Once a person becomes a legal permanent resident of the United States, that person enjoys the right to travel abroad and return.

This right, however, is not absolute. The unwary traveler may find a world of trouble on the return visit.

In an age where security is a prime concern for the Government, the good news is that more Federal agencies are communicating with each other more efficiently. The bad news is that for some permanent residents, this information could cause problems at the border.

For example, certain criminal convictions could make a person inadmissible. If a conviction has been lingering for several years without causing a permanent resident to have immigration issues, he or she may have thought that the Government no longer cared. If that permanent resident travels abroad, however, upon returning to the United States he or she could find themselves placed in removal proceedings for the old conviction.

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Homosexual Marriages

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Two states (Massachusetts and California) currently recognize homosexual marriages, as do some foreign countries. Some states, such as Hawaii and New Jersey, recognize “domestic partnerships,” or “same-sex unions,” which fall short of granting homosexual partners full marriage rights.

Marriage Benefit Limited

Not every marriage, however, can qualify a person for immigration benefits. A person may not, for example, immigrate to the United States and practice polygamy. If a person applying for a visa has been married more than once, that person must generally prove that all prior marriages ended, either through divorce or death.

Similarly, US immigration law does not recognize homosexual marriages, or even domestic partnerships, as being valid marriages.

Is This Challengeable?

The US Constitution does provide that the states must give “full faith and credit” to the records and proceedings of the other states. Thus, if a couple is married in Pennsylvania, then Virginia would be required to recognize that marriage.

But, the Constitution also gives Congress the power to decide what effect the records and proceedings of the states will have. In 1996, fearing that one state would soon recognize same-sex marriages, Congress passed the Defense of Marriage Act. This law provided that no state was required to recognize a homosexual marriage as valid, even if the marriage is valid in another state. In addition, the law provided that the US Government could not treat same-sex relationships as valid for any purpose.

While this law may seem unfair, particularly to homosexual couples, it falls within congressional power under the Full Faith and Credit Clause to determine the effect of a state’s records and proceedings. Moreover, because homosexuals are not considered by the law to be “protected classes,” this type of discrimination is not legally considered a violation of the constitutional guarantee of equal protection under the law.

Thus, state laws recognizing homosexual marriages will not provide any relief to homosexual couples seeking immigration benefits.■

Undocumented Workers and Social Security

Did you know . . .

Undocumented aliens who are working illegally in this country are not eligible to collect social security benefits.

However, most undocumented aliens who work illegally use a bogus social security number when filling out the initial paperwork. This means that while they are working, they will be paying social security taxes, but ineligible to collect benefits later. It has been estimated that over \$500 billion has been paid into the social security system based on social security numbers that do not match the names of the workers.■

Permanent Resident Travel Issues

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Another issue for permanent residents traveling abroad is the length of the overseas trip. If the permanent resident stays overseas long enough, the US Government may conclude that he or she has abandoned residency in the United States.

One way to address this problem is by applying for a Re-Entry Permit. A Re-entry Permit is required if the permanent resident has been outside of the United States for one year or more. It may be a good idea for the permanent resident to apply if he or she expects to stay overseas for six months or longer.

In order to apply for a Re-Entry Permit, the permanent resident must be physically present in the United States. However, the Re-entry Permit itself can be sent to a U.S. Embassy, Consulate, or office of the U.S. Department of Homeland Security located outside of the United States for pick-up.

A permanent resident who expects to be outside of the United States for over a year may need to file an Application to Preserve Residence for Naturalization Purposes (Form N-470). Filing a Form N-470 does not relieve a person of the need to file for a Re-entry Permit. But, it may allow a permanent resident to keep his or her status when required to be overseas for more than a year.■

Schedule of Events

- Immigration Law Classes at Bethany Lutheran Church, 2501 Beacon Hill Drive, Alexandria, VA 22306:

July 26	Family Immigration
August 2	Asylum, TPS and Other Humanitarian Programs
August 9	Removal/Deportation
August 16	The Basics of Employment Visas

All classes start at 12:30pm, and are free of charge!

Disclaimer

This newsletter is meant to be informative of current issues in immigration law. It is not meant to take the place of real legal advice. Real legal advice requires the consideration of the specific facts of your case, and an analysis of how the law applies.■

