

Immigration Edge



ATTY. DANIEL HANLON

ONE of the few positive developments in recent Immigration legislation has been relief for spouses and children of abusive petitioners in family-based immigration cases. For many years, the spouse in an abusive relationship with a lawful permanent resident or citizen of the United States was left helpless in an abusive relationship, dependent on the abuser to adjust status, but desiring to escape the dysfunctional relationship. Spouses and children involved in such situations are eligible to attain the sta-

Relief for spouses and children of abusive petitioners

tus they would have been eligible for in a normal relationship with the Petitioner through a "self-petition." Others are eligible for "cancellation of removal" if in proceedings, such that they are also eligible for permanent resident status without the abuser's petition. A spouse or child who has been "battered or subject to extreme mental cruelty" is eligible to "self-petition" and adjust status to that of a lawful permanent resident independent of the abusive spouse or parent through whom such status would have been sought. Generally, the spouse or child must establish that he or she (1) is residing in the United States and had resided at some time with abusive spouse or par-

ent; (2) was battered or subject to extreme mental cruelty during the residence; (3) entered into the marriage in good faith; (4) is not otherwise inadmissible, e.g. crimes; (5) is a person of good moral character; and (6) would suffer extreme hardship if deported from the United States. Although the INS requires that the marriage be viable at the time of filing, a divorce or other dissolution of the marriage subsequent to filing will not affect the self-petitioner's status. The "I-360" self-petition should be filed with the INS Vermont Service Center, and if approved, the self-petitioner may file for adjustment of status with the local INS District Office. One protective feature of the self-petition

process is that the INS and Immigration Judges are not allowed to use information obtained from a self-petition or other household member to make findings of inadmissibility or removability against the abused spouse. If the spouse or child is in removal proceedings, the law also offers relief based on battery or mental suffering previously endured. In such a case, the applicant must establish that he or she (1) has been battered or subject to mental cruelty by a spouse or parent Citizen or lawful permanent resident, or is the parent of a child of a Citizen or Lawful Permanent resident who has been abused; (2) has been continuously physically present in the United States for three years; (3)

has been a person of good moral character for three years;(4) is not deportable for certain criminal and security grounds or marriage fraud; and (5) would suffer extreme hardship if removed from the United States. Although the factors to be established appear self-evident in many cases, the INS and Immigration Judge's look to the letter of the law and insist that all factors are met. Mere evidence of mental or physical abuse is only one element of the case. The applicant, however, may submit any and all types of credible evidence to meet the requirements, which may include testimony of witnesses and police reports, among other evidence. Other issues arise in the

course of such cases relative to basic eligibility for adjustment of status under Section 245(a) or 245(i), and may determine which course of action is most appropriate. Regardless of these technical considerations, individuals who have been subjected to cruelty or physical abuse should be apprised of their right to escape an abusive relationship and still attain legal status in the United States. *** Daniel P. Hanlon is a California State Bar Certified Specialist in Immigration and Nationality Law and a principal of Hanlon Law Group, PC, located at 225 S. Lake Ave., 11th Floor in Pasadena, California; tel. No. (626) 585-8005. Hanlon Law Group, PC is a "full-service Immigration Law firm." E-mail: visas@hanlonlawgroup.com and www.hanlonlawgroup.com (Advertising Supplement)

From Your Life Coach, Bing



CARLYNE ODISTA-KOHNER

WHO comes into your mind when you hear the word "inspiration?" Is it President Barack Obama, Mother Theresa, Martin Luther King Jr., Jose Rizal, or Oprah Winfrey? Are they your parents, your teachers, or your best friend?

I imagine the happy and smiling face of a young gentleman who received the CNN award last year for ordinary people doing extra-ordinary things. Do you know whom I'm thinking of? Yes, it's Efrén Geronimo Peñaflores, Jr. because he inspires me. I chose to interview him for my column this month.

Bing: Given that you grew up in poverty and that gangs threatened you, where did you get your positive vision of the future? How did you stay motivated to keep changing in the face of possible violence?

Efrén: I almost quit school and gave up everything just to get even but God sent KB (Kuya Bonn) and he became my mentor. He made me realize that I do not have to destroy my future to escape problems. He helped me pick up the broken pieces and God used him to heal my broken spirit. He discouraged me from getting back at my bullies and encouraged me to do something positive. Instead of joining another gang to get revenge, Why not put up my own group and turn things around? Use whatever gifts God gave us to serve other people." We decided to not allow our lives' circumstances to stop us and to think in ways to help other people. He made sense so my classmates and friends formed DTC in August 1997.

Bing: Who most inspired you when you were young? Could you publicly acknowledge one or more of these people? What specifically inspired you about them?

Efrén: My mentor, KB! Club 8586 Inc, helped me discover that in the lives of many successful individuals the doors of opportunities opened when they embraced the love for learning. They used education to free them from poverty and slavery. I also dis-

Who inspires you?

covered that the key to opening that door is the right attitude in life and faith in God. These combinations will be able to help my family, others, and me.

Bing: How can adults foster the desire for kids to better themselves in the face of such overwhelming odds against success?

Efrén: "We must love and guide our children well! If we will have a better breed of the next generation, more decent leaders, no corrupt individuals and peace loving citizens, maybe then the world will be great again!" A quote I value so much that I have learned from my mentor.

Bing: I love your motto, "We are the change!" What are the most important changes you are committed to in your community? Clearly, education is one primary change but is there other less obvious changes that you are fostering as well?

Efrén: Environment is also one of our concerns. We discuss environmental issues in our values formation classes, we teach children basic proper waste disposal. We promote recycling. We collect bottles, cans, and old newspapers and then sell them to junk shops that help us generate funds. We tap our team's artistic skills in making creative crafts from scrap materials and sell it as part of our fundraising efforts to sustain our needs.

Bing: What was the impact of receiving the CNN Hero Award? How did your program benefit from the funding attached to the award?

Efrén: My life became busier with more talks, guest appearances, and interviews. And for Dynamic Teen Company, before we were ridiculed and laughed at. There were skeptics and they would discourage us to stop and would say that what we are doing is just a waste of time. But after the recognition of CNN, they become believers. Now, more than ever, we have more resources. DTC is more energized and much more determined to reach more kids. Like the evolution and progress of our tools of service from bags to the 'Kariton,' our approaches, programs, and curricula evolve and will keep on progressing. The duplication of the Pushcart School System upon the efforts of the different groups who took interest is happening now in Manila, up

to Bacolod, and Naga, and then also what they are now doing in Kenya. With the CNN grant we were able to buy land to where we will build DTC's learning center in Cavite City and last March 5th the groundbreaking was held. Aside from the duplication of the pushcart we're also focused on raising more resources in building the center.

Bing: We Filipinos are known as one of the most educated people in the world, yet most of our intellectuals live abroad. How do you see us as a country reversing this trend?

It will only make a difference if every single person would realize that one has the responsibility to help lift the lives of those people who are down. To give every person a fair shot to live at least a decent life and be called human. Everyday people can make a difference and create great impact in someone else's life. One is never too ordinary to be a hero.

Bing: Do you have any personal political aspirations? Do you think being a member of the government would give you more or less power to help change current situations? What do you think of the election of Mr. Aquino? Will he be helpful to the children and adults of your community?

Efrén: I don't see myself on that horizon. Congratulations to Sen. Aquino! I couldn't tell as of the moment on how he would be able to lead the country towards better stature. But I'm hopeful that he would do the right thing, would decide for the benefit of most people, would continue the legacy his parents marked in uniting the people, and building our nation.

Bing: You are doing an excellent job of training children read and write. Are you also training the kids to use new technology? What do you think is the role of the Internet in the education of Filipino kids in general?

Efrén: Yes we do teach the kids basic computer literacy. Internet brings people around the world together. It enables us to communicate with people across countries that share our visions and endeavors. It also helps us build relationships across boundaries of geography or culture. It provides us opportunities for knowledge exchange that can be far more effective than memo-

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Are You A Victim of Loan Fraud?



PATRICK PULATIE

(Part 2)

THE actual Foreclosure Process in California is governed by CA Civil Code, 2924. It explains and details the Foreclosure process and what is needed. Essentially, here is the process. Lender sends an Intent to Foreclose letter 30 days prior to the Notice of Default being filed. Lender files the Notice of Default.

Lender files the Notice of Trustee Sale 90 days after the Notice of Default.

Lender can hold the Trustee Sale 20 days later.

The problem with this process is that there are procedural events that must occur to make this process lawful, and probably 70% of the foreclosures have significant issues with these procedures. A few of the issues that we run across daily are these.

The most common issue involves the Trustee who will conduct the Sale. At the origination of the loan, a Trustee is named. However, these trustees do not usually conduct foreclosures so a new trustee must be named. Here lies the issue. The Substitution of Trustee must be notarized prior to or concurrently with the Notice of Default, or their actions are likely unlawful. Most times, LFI finds on its examinations that the Substitution has occurred

Foreclosure fraud

after the Notice of Default. As a result, attorneys will file that in their complaints for unlawful foreclosure and hope that the judge understands the law.

A second issue that arises is with the Beneficiary on the Deed of Trust. Securitized notes usually display MERS as the Beneficiary. However, MERS is a computer tracking software program and not a "true beneficiary". MERS acts only in the role of "nominee" or "agent".

Under California Law, only the person or entity entitled to payment of the Note, by "assignment" and "duly" recorded, can be the foreclosing party. With Securitization under MERS, this entity is not recorded until after the Notice of Default is filed, if then. Therefore, the argument is that when the Notice of Default was filed, the foreclosing party was not lawfully recorded as Beneficiary, so the Notice of Default was unlawful. Many courts are now responding positively to this argument.

A third issue that is constantly found refers to the Amount Due on the Notice of Default. This amount has to be reasonably accurate. If it is "grossly misrepresented", then the Notice of Default or any subsequent action is likely unlawful. LFI continuously finds that such amounts are calculated incorrectly and attorneys use this in force the lender to restart the foreclosure process.

One of the most intriguing findings that occur is the signatures on various documents. Of-

ten, it will be found that the same person has signed different documents using different job titles with different companies. One such file recently had Mary Doe signing the Assignment of Beneficiary as VP of MERS. This document named ABC Bank as the new Beneficiary. She then signed the Substitution of Trustee as VP for ABC Bank and named DEF as the new Trustee. Two weeks later, Mary Doe signed the Notice of Trustee Sale as VP of DEF. (I did change the names of the entities for legal purposes.)

As can be concluded, this type of action would offer a knowledgeable attorney many different avenues to attack the foreclosure process. One could allege fraud, conflict of interest and much more than that.

These are just a few of the different issues that can arise from examination of the Foreclosure Process. There are many other points of contention that arise with the Foreclosure Process and there is neither time nor space to review them all. You should always have competent people review your documents and not try to do it yourself. Then, you should retain legal counsel to represent you against lenders. ***

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Kasangga sa Husgado. Mapagkakatiwalaan Mo!

The Voice of FilAmerica

Political empowerment is still a treasure that eludes us as a community here in America. While we are the second largest Asian American community in the United States, we have yet to harvest the power that comes from our numbers. The Voice of FilAmerica features elected and appointed officials – regardless of political affiliation – in the different US states who are of Filipino ancestry. As your Filipino American community newspaper, the Asian Journal recognizes the fact that we all have a responsibility towards bringing political empowerment to fruition, especially for our future generations. It is our hope to have our voices heard all over America.

Justice Simeon R. Acoba, Jr

The 3rd Filipino-American appointed to Hawaii's Supreme Court

ON May 19, 2000, Simeon R. Acoba, Jr. became only the third Filipino American appointed to Hawaii's highest judicial office. His first ten-year term as a Justice of the Hawai'i State Supreme Court ends this 2010.



The son of Filipino immigrant Simeon Acoba Sr. from Bacarra Ilocos Norte, Philippines, Simeon R. Acoba Jr, called "Sim", was born 11 Mar 1944 in Honolulu. Justice Acoba is a 1962 graduate of Farrington High School. He received his Bachelor of Arts degree from the University of Hawaii with honors, and his Juris Doctorate degree from the Northwestern University School of Law in 1969. He was admitted to practice law in the federal and in the Hawaii state courts on October 9, 1969. In 1969, Acoba returned to Honolulu to become a law clerk for Hawai'i State Supreme Court Chief Justice William S. Richardson. In 1970, he left this position to become a special assistant to University of Hawai'i President Harlan Cleveland. Acoba Jr. later engaged in the private prac-

tice of law. From 1975 to 1977, Justice Acoba served as special counsel to the Division of Occupational Safety and Health for Hawai'i.

In addition, he was special counsel to the Campaign Spending Commission and the Public Utilities Commission.

Sim also worked as a house of representatives majority attorney, and as an adjunct professor at the Richardson School of Law, University of Hawai'i.

In 1979, Justice Acoba was appointed by Chief Justice Richardson as a per diem judge in the District Court of the First Circuit. In 1980, Governor

George Ariyoshi appointed Acoba to the Hawaii State Judiciary as a circuit court judge. Governor John Waihee elevated Acoba in 1994 to the Hawaii State Intermediate Court of Appeals, the second highest court. Justice Acoba served as a judge of the Intermediate Court of Appeals of Hawai'i from May 26, 1994 to May 18, 2000. Later, Governor Benjamin J. Cayetano appointed Acoba to the Hawaii State Supreme Court and was sworn in on May 19, 2000. (AJP/Press)