

# Legal Times

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## The Attorney's Corner

*Let us talk law today.*

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The Greaves Law Group, LLC

### **President Obama Signs Law Cancelling Automatic Revocation of Petition upon Petitioner's Death**

On October 28, 2009, President Obama passed into law Congress' landmark immigration bill that ends the automatic revocation of a visa petition when the petitioner dies. This will provide significant relief to immigrants and their families who have waited for their priority dates to become current only to have the petition revoked upon the death of the petitioner. The new law helps many surviving family members residing in the United States.

The demand for immigrant visa numbers for family-based and employment-based sponsorship far exceeds the supply. This has resulted in massive backlogs with immigrants waiting years

and even decades for their priority date (their place in line) to become available. Many petitions simply do not survive the protracted waiting period. The death of a petitioner or principal beneficiary resulted in an automatic revocation of the immigrant visa petition. Surviving family members were left with no means to obtain immigrant status based on that petition.

Specifically, under this new law, six groups of surviving family members, who were in the US when the petitioner or principal beneficiary died, and continue to reside in the US, may adjust status to permanent residents when their priority date is reached.

The first group allows the spouse of a US citizen or the unmarried child of a US citizen under the age of 21 to continue processing even if the US citizen petitioner dies while the immigrant visa petition is either in process with the immigration service or has been approved. Before this law, if the US citizen died before the petition was approved or permanent resident status was granted, the spouse or child would be unable to obtain permanent resident status.

The second group covers the family preference categories that have approved or pending petitions. These include the spouse and unmarried children of permanent residents, the unmarried children over the age of 21 of US citizens, married children of US citizens, the brothers and sisters of US citizens, and the derivative children of this group. The new law, however, allows her and her family to immigrate to the US as long as they were residing in the US when the US citizen died and continued to reside in the US when their visa number became available.

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The third group covers the derivative beneficiaries of pending or approved employment-based immigrant visa petitions. These are the spouse and unmarried children under 21 of someone sponsored under an employment based category. For example, an immigrant was petitioned by her employer as an accountant. She and her family are residing in the US. Her immigrant visa petition is either approved or in process and she and her family are waiting for her priority date to be reached. Before her priority date is reached, or the USCIS can approve an application for adjustment of status, the accountant unfortunately dies. Prior to the new law, her family would not be able to continue the immigrant process. This scenario is unfortunately all too common. To add insult to the injury of losing a loved one, under the prior immigration law, the family would have no means of continuing the immigrant process. They would be required to bury a loved one and uproot their lives from the US. Under the new law, the family may continue processing for permanent resident status even if the principal beneficiary passes away. This law provides much comfort to those who have brought their families to the US and are dependent on the employment immigrant visa to provide immigrant status for the family. If they pass, their families will continue to be provided for in the immigrant process.

The fourth and fifth group covers spouse and children of asylees seeking a derivative asylum application and the beneficiary's of approved refugee/asylee relative petitions. They too may continue processing if the principal beneficiary or petitioning relative passes away while they are in process. The final group covers the spouse and children of "T" and "U" visa holders who may continue processing even if the principal beneficiary passes.

Unfortunately the new law does not apply to surviving family members residing outside of the US. But, Congress has recognized that families are being disrupted by the current immigration law and has provided some relief. The President's passing of the law grants much needed help to many immigrant families.\*\*\*

### *Important Links and Resources for your Legal Research*

National Immigration Project of the Lawyers Guild for HIV:

<http://www.nationalimmigrationproject.org/HIV/2004HIVManual/2004hivmanual/>

Department of Health and Human Services: Centers for Disease Control and Prevention:

<http://www.cdc.gov/hiv/links.htm>

National HIV and STD Testing Resources:

<http://www.hivtest.org/>

Visa Bulletin:

[http://travel.state.gov/v/visa/frvi/bulletin/bulletin\\_1770.html](http://travel.state.gov/v/visa/frvi/bulletin/bulletin_1770.html)

USCIS page for processing time reports and individual case status:

<https://egov.uscis.gov/cris/jsps/index.jsp>

USCIS - list of physicians for adjustment:

<http://www.uscis.gov/civilsurgeons>

## CALENDAR OF EVENTS

### FREE LEGAL ADVICE CLINIC

235 PEACHTREE STREET

DECEMBER 14, 2009, 3:00 – 4:30 P.M.

(Call to register: 404-287-2388)

### IMMIGRATION SEMINAR

ORLANDO, FLORIDA

DECEMBER 19, 2009, 6:00 – 8:00 PM

Bring your immigration forms and question.

(Call to register: 404-287-2388)

**The Greaves Law Group is the Source for All Your Legal Needs**

Contact us today for a free phone consultation

<http://www.greaveslawgroup.com>

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## HIV Waivers

On October 30, 2009, President Obama announced the publication of the rule ending the HIV immigration and travel ban. Following President Obama's announcement, on November 2, 2009, the Department of Health and Human Services (HHS) published final regulations which will remove HIV from its list of "communicable diseases of public health significance" and will remove the HIV test from the routine medical exam for lawful permanent resident applicants. The regulations will go into effect on January 4, 2010, following a routine implementation period. **If you are unsure of how the change in the law will affect your case, please call or email our office.**



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