

NVC must send notice 'to the alien' before terminating visa registration

Written by MICHAEL J. GURFINKEL, ESQ.
Friday, 10 December 2010 19:00



On my show, "Citizen Pinoy," I always remind people to keep their addresses current with the National Visa Center (NVC) while waiting for the priority date on their approved petition to become current.

In many cases, the wait for an immigrant visa can be from 10 to 25 years!

During that time, people move and thus would no longer have the same address as when the petition was originally filed.

The problem is that when the priority date finally becomes current, the NVC sends the forms and paperwork to the last address the NVC has on file.

So, if you move without giving your new address to the NVC, it will be sending the forms and other paperwork to your old address.

Immigration laws and regulations state that once a person is notified that their visa is available, they have one year to apply for the visa.

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If they fail to do so, their visa registration could be terminated, and the file destroyed, resulting in the loss of that priority date.

In fact, the regulations state that it is the alien’s responsibility to keep his or her address current with the NVC, not the NVC trying to track you down.

I know of many people who failed to apply for their visas within one year (because the NVC notices were sent to the old address), and thus their case was terminated under Section 203(g).

However, there was a recent decision by the Ninth Circuit which held that an alien's visa registration was improperly terminated because the notice of visa availability was not sent “to the alien.”

Instead, notices were sent to the petitioner and/or the alien’s attorney.

In that case, an alien was petitioned by his brother in the F-4 category.

Twelve years later, when the priority date finally became current, the NVC sent an instruction package to the attorney who had helped file the petition over a decade earlier.

The NVC sent follow up letters to that attorney in 2001, 2002 and 2003, but the attorney's records did not indicate that he received any of those notices.

The NVC eventually terminated the alien's visa registration and destroyed all the related records, based on the alien’s “failure to apply” for his visa within one year of notification.

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The alien sued to have his visa registration reinstated.

The Ninth Circuit noted that the law governing termination of visa registration states that the "Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to the alien of the availability of such visa..."

The court held that the statute was explicit in stating that the notification must be to the alien.

Therefore, notification to the alien's attorney or to the petitioner did not comply with the law.

(Of course now, the NVC sends to the alien a form "Designation of Agent," whereby the alien can designate his attorney to receive such paperwork. However, at the time this visa registration was terminated, that procedure was not in place.)

Accordingly, the court held that because the law and regulations "unambiguously required service 'to the alien,' we need not look to the State Department's interpretation of these materials...Therefore, any notice sent by the State Department to [the attorney concerning the alien's] visa eligibility cannot serve as the prerequisite for termination under INA Section 203(g). Because the government did not send notice 'to the alien,' termination of [the alien's] visa registration was contrary to law."

If your visa registration was terminated by the NVC, but you never received notice, I would suggest that you seek the advice of an attorney who can evaluate your situation to determine if notice was properly sent and/or whether you should be entitled to have your visa registration re-instated.

Remember, the stakes are very high.

In some cases, a person may have waited more than a decade for the priority date on their petition to become current.

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It would be a shame that after all that waiting, the case was shredded by the NVC because you did not “apply within one year.”

Michael J. Gurfinkel is licensed, and an active member of the State Bar of California and New York. All immigration services are provided by, or under the supervision of, an active member of the State Bar of California. Each case is different. The information contained herein (including testimonials, “Success Stories,” endorsements and re-enactments) is of a general nature, and is not intended to apply to any particular case, and does not constitute a prediction, warranty, guarantee or legal advice regarding the outcome of your legal matter. No attorney-client relationship is, or shall be, established with any reader.

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