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### **Congress Ends the Widow Penalty**

WASHINGTON, D.C. – The death of a spouse will no longer result in automatic deportation of widows and widowers and their children, following a historic vote in the Senate today. Ending a policy traced back at least seventy-one years, Congress has abolished the “widow penalty.”

Thanks to a concerted effort by families, legal counsel and legislators over a period of more than five years, a horrible practice that added insult to injury is now at an end. Media accounts, including those in the Washington Post, New York Times, and CBS News 60 Minutes have drawn attention to the more than two hundred widows and widowers of U.S. citizens facing the widow penalty. The New York Times Editorial, published April 28, 2009, summarized the issue and its solution succinctly:

“For hundreds of unlucky immigrants, the death of a wife or husband has been quickly followed by an order to leave the country. It’s called the “widow penalty,” a tragic quirk in federal law that unfairly punishes recently married immigrants whose citizen spouses die before their green-card paperwork is processed.

United States Citizenship and Immigration Services, which handles applications for legal permanent residence, says its hands are tied. According to its interpretation of the law, if a citizen dies before the agency acts on his or her petition for a spouse’s green card — and if the marriage is less than 2 years old — the surviving spouse automatically ceases to be a spouse.

The petition dies with the petitioner. No exceptions can be made.

Advocates for shattered families — grieving widows and their young children, grandparents about to be bereaved a second time, as their grandchildren are deported — have sought legal relief for years. Congress has been no help so far, but a number of courts have rejected the absurdity of a situation in which the bonds of marriage, and a chance at citizenship, can be destroyed by routine bureaucratic processing delays.

The most recent victory came last week in a class-action suit in federal district court in Los Angeles. Judge Christina A. Snyder instructed the Department of Homeland Security, to which Citizenship and Immigration Services belongs, to reopen the cases of 13 immigrants who had been denied green cards

after their American spouses had died. The lawyer who brought the case, Brent Renison, is hoping that momentum is finally building to correct the injustice.

As other cases make their way through courts around the country, the best solution remains the simplest: a legislative or administrative fix. Bills to remedy the flaw have been introduced in the House and Senate, and the Department of Homeland Security has said the widow penalty is among the rules and procedures it has been reviewing at the instruction of the department's secretary, Janet Napolitano.

Ms. Napolitano and Michael Aytes, the acting leader of Citizenship and Immigration Services, should abolish the "widow penalty," or Congress should do it for them. The law should protect immigrants who follow the rules. It should never let their dreams of citizenship be tragically derailed by death and an unthinking bureaucracy."

Because the Administration chose not to abolish the widow penalty, Congress stepped up and did it for them. Surviving spouses and their families owe a debt of gratitude to Congressman Jim McGovern (D-MA), and Senators Bill Nelson (D-FL), Orrin Hatch (R-UT), and Robert Menendez (D-NJ) for their leadership on this issue, as well as their devoted staff Jay Lucey, Matt Nosanchuk, Matt Sandgren, and Kerri Talbot.

The House voted 307 to 114 last week to pass the Department of Homeland Security Appropriations Conference Report, of which the provision to end the widow penalty was a part. Today the Senate voted 79 to 19, passing the bill by a significant margin, and President Obama is expected to sign the bill into law.

Further information on the widow penalty, including the lawsuits, legislation and the effect of the new legislation can be found at the non-profit website for Surviving Spouses Against Deportation: [www.ssad.org](http://www.ssad.org)