



December 8, 2008

To: Obama-Biden Transition Team
From: Brent Renison, pro bono Counsel
Surviving Spouses Against Deportation
Re: The "Widow Penalty"

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Surviving Spouses Against Deportation Urges an End to the Widow Penalty

On November 23, 2008, CBS "60 Minutes" exposed the Widow Penalty to a national audience in a segment hosted by Bob Simon entitled "For Better or For Worse – A Loss of Love and Country." This letter is written to the Obama-Biden Transition Team in an effort to educate the incoming Administration about the Widow Penalty, and to urge its end through administrative interpretation and through legislation. There is a way to ameliorate the Widow Penalty through a simple administrative policy change – to recognize that once an application for benefits is lawfully filed, the death of the petitioning relative does not automatically strip the survivor of the status of a spouse. There is also a way to help those who intended to file an application, but who did not have an opportunity to do so before an untimely death – through legislation.

Marlin Coats did not hesitate to jump in the water to try to save two drowning teens caught in a riptide at San Francisco Beach Park. He lost his life that Mother's Day in 2006, but because of his heroism those two teenagers survived. So why is the U.S. now responding to Coats' ultimate sacrifice by deporting his wife Jacqueline Coats? And she is not the only one – widows of U.S. contractors killed in Iraq, Border Patrol Officers, victims of drunk drivers, and more.

Today, USCIS is deporting the widows of American citizens, with full authority and sanction from the current Administration, automatically and without exception, where the death of the American spouse occurred before lengthy administrative visa processing could be completed. This practice is morally corrupt, and an injustice. Even a grade school child knows this is wrong. Deporting widows of American citizens, when they have followed the rules, says bad things about our country.

As Bob Simon reported in the “60 Minutes” segment, “Raquel, like all the other widows 60 Minutes met, had entered the U.S. legally. Still, immigration has been rejecting requests for permanent residence if the American spouse died before they had their immigration interview to prove their marriage was based on love. But the government can take months – sometimes more than a year – to schedule that interview. Raquel’s mother-in-law, Linda, says Raquel shouldn’t be penalized because the bureaucracy didn’t move fast enough. ‘They were doing things legally. They filed the right papers. They filed them in a timely manner. Things were not processed in a timely manner. And they’re, and then my son died. This was not something that you can foresee,’ Linda says.” (Source: CBS News, “60 Minutes” website: <http://www.cbsnews.com/stories/2008/11/21/60minutes/main4625729.shtml>)

We have urged the administration to recognize, as a number of Courts have recognized, that a spouse does not cease to be a spouse when the American spouse dies during routine bureaucratic processing of an immigration benefit. *See Freeman v. Gonzales*, 444 F.3d 1031 (9th Cir. 2006); *Robinson v. Chertoff*, 2007 WL 1412284 (D.N.J. May 14, 2007) *appeal docketed*, No. 07-2977 (3d Cir. July 5, 2007); *Taing v. Chertoff*, 2007 U.S. Dist. LEXIS 911411 (D. Mass 2007), *appeal docketed*, No. 08-1179 (1st Cir. Feb. 11, 2008); *Lockhart v. Chertoff*, 2008 U.S. Dist. LEXIS 889 (D. Ohio 2008), *appeal docketed*, No. 08-1179 (6th Cir. 2008). The government has appealed these rulings. Yet a simple administrative remedy is at hand – to rescind the Memorandum issued by Mike Aytes, Associate Director of Domestic Operations, USCIS, on November 8, 2007 – and issue a new Memorandum implementing the *Freeman* decision nationwide without the unnecessary and unlawful requirements of the Aytes Memorandum being challenged in a class action lawsuit. *See Hootkins v. Chertoff*, No. 07-05696 (CAS) (C.D. Cal., filed August 30, 2007) (challenging the substitute affidavit of support requirements and humanitarian reinstatement requirements as unlawful and *ultra vires*).

Our pleas have fallen on deaf ears in the Bush Administration since the issue was reported on the front page of the Washington Post December 2, 2004. Indeed, Secretary of Homeland Security Michael Chertoff was heard during the “60 Minutes” segment defending the Administration’s position as “responsible lawyering.” There is nothing responsible, however, about the way that this issue has been handled by the Bush Administration. Now, other lawsuits have begun to be filed around the country, costing taxpayers money and wasting scarce government resources. *Hanford v. Chertoff*, Civ. No. SA-08-CA-0795 (XR) (W.D. Texas, Sept. 25, 2008); *Kells v. Chertoff*, No. 08-CV-1582-CAS (E.D. Missouri, Oct. 14, 2008); *Robledo v. Chertoff*, No. AW-08-CV-2581 (D. Maryland, Oct. 2, 2008); *Gorovets v. Chertoff*, No. 08-10094 (LAP) (S.D.N.Y., Nov. 20, 2008); *McKoy v. Chertoff*, No. 08-3274 (DKC) (D. Md., Dec. 4, 2008).

In addition to administrative action, legislation has been introduced that would end the Widow Penalty. Bi-partisan legislation, H.R. 6034, S.3369, would put the unfair practice of deporting widows of American citizens to rest once and for all, and I ask that the Obama-Biden Transition Team consider future efforts to enact this important legislation. We should reward those who follow the rules, not punish them.

Because of a crack in the law, women and men who entered this country legally are facing deportation when their spouses die during the lengthy administrative visa process. There are

scores of these cases across the country affecting women, mothers and children. Don't forget Khin Win of Las Vegas, Nevada who lost her husband to a drunk driver, then saw her father-in-law killed by a drunk driver three months later; Osserritta Robinson of Mahwah, New Jersey whose husband was killed by the negligence of a ferry captain in the 2003 Staten Island Ferry disaster; Ana Maria Moncayo-Gigax of Santa Clarita, California whose husband was a U.S. Border Patrol agent killed on duty in a car accident in Washington D.C.; Raquel Williams (profiled on CBS News "60 Minutes") of Orlando, Florida who was left to care for the couple's son Ian after her husband died of sleep apnea; Maria Diaz Ruiz of Chicago, Illinois whose husband suddenly died of a heart attack at age 31; Gladys Walsh of Massachusetts whose husband also died of a heart attack at age 38, leaving her to care for their son who was born with severe bilateral club feet; Nelly Lockhart of Cleveland, Ohio whose husband died of a heart attack, and has been left to care for their son, and at the same time deal with deportation proceedings.

The USCIS claims it cannot approve an application for permanent residence (a green card) when a spouse is killed before the bureaucracy acts on the couple's residency application - no exceptions. According to the current Administration, it all depends on the timing of the bureaucracy, not the legitimacy of the marriage. Administrative delay and the happenstance of a death are the reasons USCIS treats these cases differently. Without an administrative policy change, or a technical amendment to the immigration law, USCIS will continue to compound the loss of these surviving spouses, making them face deportation, lose employment authorization, and cope with separation from family members and the home they made with their American spouses. This injustice is not required by current law, and should be halted immediately.

Further information, including the legislation, litigation and news articles on the Widow Penalty, can be found at the non-profit website for Surviving Spouses Against Deportation: www.ssad.org