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Massachusetts Federal Court Rules Death of American Spouse Does Not Mean Automatic Denial

LOWELL, MA – A federal court in Massachusetts ruled yesterday that the surviving spouse of an American citizen can proceed with her properly filed application for residency, despite the United States Citizenship and Immigration Services (USCIS) earlier ruling that she was stripped of the status of spouse when her husband died during lengthy administrative processing.

The Honorable William G. Young, United States District Judge, found that Mrs. Neang Chea Taing, a citizen of Cambodia who entered the country legally, had filed all the necessary paperwork required for legal residency together with her naturalized U.S. citizen husband. When her husband died, USCIS denied her application, stating that she was no longer a spouse, and commenced deportation proceedings against her. Her attorney, Tom Stylianos of Lowell, Massachusetts, filed a lawsuit in federal court seeking to set aside the unlawful determination.

Members of the American Immigration Lawyers Association have long been urging the USCIS to recognize that its own delay, coupled by an unfortunate death, should not strip legal status from an applicant who followed all the rules. A non-profit advocacy organization, Surviving Spouses Against Deportation (www.ssad.org) was founded to fight what has been coined the “widow penalty.” SSAD has discovered over 100 cases of the widow penalty nationwide.

The Massachusetts decision follows a U.S. Ninth Circuit Court of Appeals decision issued in 2006, *Freeman v. Gonzales*, and a New Jersey District Court decision from this year, *Robinson v. Chertoff*. Osserritta Robinson is the surviving spouse of an American killed in the Staten Island Ferry accident. The couple filed all the necessary applications and were simply waiting for USCIS to look at the applications when Mrs. Robinson’s husband was killed in the tragedy. The federal court ordered that she be treated as a spouse, but USCIS has appealed that decision to the U.S. Third Circuit Court of Appeals. A national Class Action lawsuit was filed in August 2007 in Los Angeles federal court, and a hearing will be held on January 28, 2008. The lead plaintiff is Carolyn Hootkins, widow of actor Bill Hootkins of Star Wars fame. Others in the lawsuit include widows of American contractors killed in Iraq, the widow of a border patrol agent, and the widow of a man killed by a drunk driver.

Legislative efforts to end the widow penalty have been underway for several years, but the debate over immigration reform has so far hampered progress. Legislation to end the widow penalty passed the Senate in 2006, but the House failed to pass it. In 2007, Senator Bill Nelson of Florida introduced an amendment to the comprehensive reform bill that would end the widow penalty, but Senators failed to agree on an immigration reform package. Surviving Spouses Against Deportation pro bono counsel Brent Renison can be reached at (503) 597-7190. Mrs. Taing’s attorney Tom Stylianos can be reached at (978) 459-5000.

For more information, visit the SSAD website: <http://www.ssad.org>