

Play by the Rules; Get Deported

Flaws in the immigration system
hurt surviving spouses

BY BRENT RENISON



Brent Renison

AT THE BUSY INTERSECTION OF immigration law and politics, there exists a small group of surviving spouses of American citizens. For the past 37 years, the U.S. government has been deporting widows whose citizen spouses die before the residency paperwork filed on their behalf has been processed. For the past three years, I have been fighting this so-called “widow penalty” and have come to understand through this battle how difficult comprehensive immigration reform will be to achieve.

When I met Carla Freeman three years ago in the spring of 2004, she had lost her husband Bob Freeman in a car accident. Carla, a citizen of South Africa, met Bob while in Chicago as an au pair exchange visitor, and they wed in 2001. Bob worked for Costco as a tire center manager and, in February 2002, was driving to work on his day off for an inspection of his work area. On that cold morning, a Pepsi truck crossed the center lane and collided head-on with his car, killing him. During our first meeting, Carla cried as she recounted her loss and explained what immigration authorities had said to her. Although she and Bob had filed all the necessary paperwork the year earlier for Carla to become a legal permanent resident, the government no longer considered her a spouse and was poised to deny the application and deport her.

Struck with such an inequitable situation, I took her case to court and, at the same time, began lobbying Congress to fix the widow penalty. I even found a friend in Costco. Bob Freeman’s employer wanted to do what it could to help his widow. Costco’s legal depart-

ment joined my efforts to urge a change in the law. They contacted senators and representatives in Congress and corresponded with those working on immigration reform. They periodically checked in on legislators and kept the issue alive.

I was optimistic that legislators, once aware of the hardship and injustice faced by these widows, would quickly act to remedy the situation. Three years later, I have a more realistic view. Meaningful reform may prove elusive in the short term.

On the immigration issue, Congress appears deadlocked. Some legislators want more enforcement of the laws, and others want a functioning temporary worker program and legalization for the undocumented in our midst. Employers are now facing a wave of enforcement actions and criminal charges for hiring undocumented workers, and the workers see higher deportation rates. The undocumented are criticized for circumventing the orderly visa process, and businesses who hire them are blamed for providing an economic incentive to break the law. What legislators have not realized, however, is that there is no orderly visa process for non-professional level employment. No line to wait in, no legal way to bring workers here.

As the public debate continues, many continue to suffer in anonymity. Maria Moncayo-Gigax, the Ecuadorian-born widow of a U.S. border patrol agent who died in a car accident while on duty in our nation’s capital, faces deportation because her application to be a resident was pending when her husband died.



Two widows of American contractors who were killed in Iraq helping our troops now face deportation. One, Dahianna Heard, is a Columbian citizen who lives in Florida with the couple's one-year-old son. She is allowed to keep her husband's name and raise their son — but not in this country, according to the Department of Homeland Security. The other, Diana Engstrom, is a Kosovo native who lives in Chicago. She met her husband Todd Engstrom in Kosovo while he was working with U.N. peacekeeping forces, and they were married at his parents' home in December 2003. Todd was in Iraq as a private contractor for the Army responsible for training Iraqi security forces but was killed in Fallujah in September 2005.

There is Jacqueline Coats, a foreign student from Kenya whose American husband died trying to save two teenage boys from drowning at San Francisco Beach Park.

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Also dragged into this horrible law is Khin Win, a foreign student from Burma whose citizen husband was killed by a drunk driver in Las Vegas in March 2006. Three months later, a drunk driver would claim her father-in-law. Now, her mother-in-law faces losing a daughter-in-law because of the widow penalty.

I have uncovered more than 70 cases nationwide in which the widow penalty has resulted in the denial of a pending application for legal residency. The common thread in these cases is an immigration process that takes months or years to complete and the sudden death of the citizen spouse after filing.

While the list that I maintain is a grisly reminder of our fragile mortality, it also serves a vital role for the family members who survive. We are now organized, and the days of silent suffering are over. Armed with a favorable U.S. Ninth Circuit Court of

Appeals decision in Carla Freeman's case from April 2006, which holds that a surviving spouse still qualifies for residency, attorneys in other parts of the country are challenging the legality of the widow penalty. While we have yet to reach a final resolution on Carla's case, or any other, due to government resistance to the ruling, we are optimistic that Homeland Security will follow the law and that others will eventually benefit.

We have formed an advocacy organization, Surviving Spouses Against Deportation, to engage in targeted outreach and education. Employers of those who have passed away and businesses employing their survivors alike have joined in asking what they can do to help. We have responded by explaining that the debate over immigration reform is in the hands of employers and the workers who help them be successful. Congress listens to employers, and if a united voice for immigra-

tion reform springs forward, lawmakers are bound to listen. An employer should make a monthly habit of picking up the phone, talking to his or her senators and congressperson, and sending letters to follow up.

The widow penalty serves no legitimate purpose and wastes the resources of our government year after year. So why has it existed so long? In the words of Martin Luther King Jr., “Human progress is neither automatic nor inevitable...Every step toward the goal of justice requires sacrifice, suffering, and struggle; the tireless exertions and passionate concern of dedicated individuals.”

Recognizing this has helped me learn a valuable lesson in changing the law — persistence. □

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