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## LEGAL NOTES

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### A green card for a domestic helper

Under the law, domestics are allowed to file for a green card but the difficulties they face will be special.

Because they are classified as unskilled workers, their visa numbers can be and most likely will be delayed for more than ten years. If they are in the US for six months on an expired visa, they have to leave and stay out of the country for three years before they can return. If their illegal stay in the US lasts one year, they will be barred for ten years.

It used to be that domestics could adjust their status in the US upon payment of a penalty. But that law has expired. Now, status can be adjusted only if one leaves the country and accepts the three-year or the ten-year non-admissibility. Perhaps, in the future, Congress may restore the old law.

To shorten the waiting period for domestics' green cards, immigration lawyers could attempt to qualify some of them as skilled workers with two years experience like home managers, cooks and butlers. But such maneuvering fails to impress the Labor Department and the Immigration and Naturalization Services, both of which look upon such applications with due skepticism.

Domestics applying under the unskilled category can undergo two

steps. The first is the application for alien labor certification with the Department of Labor. If this is approved, then an immigrant visa petition can then be filed with the INS. The filing date of the labor certification establishes the "priority date," a time order in which an alien is placed on the waiting list.

Because of the visa backlog, approval of both a labor certification and an immigrant visa petition does not entitle the alien to an immigrant visa right away. If the alien quits his or her job, the priority date may still be retained, provided that a new employer applies for him or her and obtains an approved labor certification and petition.

The labor certification is issued only when an employer proves there are no able, willing and qualified US workers available for the job, even as the prevailing wage is offered.

The prevailing wage of a domestic worker is ascertained. A live-in worker must be provided with a private room and board. In addition, an employer has to justify in his labor certification application his need for a live-in domestic as a "business necessity." In addition, the alien must show one year of full-time paid job experience.

The issuance of a labor certifica-

tion or the approval of an immigrant visa petition does not ipso facto confer authorization to work. So, it usually happens that the domestic, while waiting for an immigrant visa, overstays in the US and continues to work in violation of immigration and labor laws. This then exposes the employer to stiff fines and the alien to deportation.