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## LEGAL NOTES

Ruben S. Seguritan

### Immediate green cards for derivative beneficiaries

**W**hen an alien is admitted as a permanent resident in the US, does it follow that his spouse and child immediately get their green card as well?

Yes, if the spouse and child relationship existed prior to the principal alien's admission to the US. They are entitled to the same status and thus, the same priority date if they are "accompanying" or "following to join" spouse or child.

The "accompanying" spouse or child must apply for the immigrant visa simultaneously with the principal alien or within 120 days from the alien's admission to the US. The spouse or child who is "following to join" may apply any time as long as the required relationship continues.

A spouse or child relationship acquired after the principal alien's admission to the United States, except

a child of a marriage existing at the time of the principal alien's admission to the United States, is not accorded derivative status, and thus is not entitled to the priority date of the principal alien. The principal alien must file a second preference petition for such spouse or child.

What about the case of an alien who gets married or begets a child after the issuance of his immigrant visa but before he gets admitted into the US? (Not that visa issuance is done by the US Consul in Manila while admission into the US occurs at the port of entry).

The INS says that yes, there is derivative status but notes that although the law provides that a spouse or child acquired it after visa issuance but prior to the principal alien's admission into the United States shall be entitled to the derivative status and the priority date of the principal alien, often the determination of that priority date may be time consuming and difficult.

No record would exist at the post in the name of a spouse or child acquired after the issuance of the visa but before the entry of the principal alien. Therefore, if the principal applicant's date of admission for permanent residence is earlier than the cutoff date for the numerical limitation applicable to the spouse and children, the consular officer may use that date and need not attempt to determine the principal applicant's actual priority date.

However, if the principal applicant's date of admission is

not earlier than the applicable cutoff date, the consular officer must take the necessary steps to determine the principal applicant's priority date and use that date as the priority date for the spouse and children.

Other relevant instructions of the State Department are as follows:

\* The death of the petitioner prior to the beneficiary's travel to the United States results in the automatic revocation of the petition and the loss of the alien's priority date. However, if the consular officer believes that special humanitarian reasons exist which would warrant consideration by INS of the reinstatement of the petition, the consular officer may prepare a memorandum requesting such consideration and forward it with the petition to INS.

\* In the case of the death of the principal beneficiary prior to admission to the US, neither the petition nor the priority date would remain valid for a derivative beneficiary.

\* An alien issued an immigrant visa who fails to enter the US would be entitled to the priority date previously established by the petition. However, since the visa has expired, the alien must apply for a new visa. If, however, the same circumstances do not exist, the consul would refer the case to the Department for an advisory opinion.

*Editor's Note: Mr. Seguritan has been in the general practice of law in the US for over 24 years. His office is located at 11 Pennsylvania Plaza Suite 2101 NY, NY 10001, tel no. (212) 695-5281. Questions regarding this article may be addressed to him.*