

IMMIGRATION HIGHLIGHTS



By Atty. Crispin Lozano

Filing Petition for an Orphan

FILING a petition for an orphan does not need the two-year residency with the child that is required for petition for non orphans. Below are the basic requirements:

Question: Who is an orphan?

Answer: An orphan is an alien child who has no parents because of the death or disappearance or abandonment or desertion by or separation or loss from both parents.

An orphan is also an alien child who has only one parent who is not capable of taking care of the orphan and who has in writing irrevocably released the alien for adoption.

Question: Who can petition an orphan?

Answer: The petitioner must be a U.S. citizen. If married, the petitioner must file the petition jointly with his or her spouse. The spouse of a U.S. citizen does not need to be a U.S. citizen. An unmarried petitioner must be at least 25 years of age to file an orphan petition.

Question: What is the age of the child to be considered as orphan for adoption?

Answer: The petition for an orphan must be filed before the child reaches the age of 16 years.

Question: What are the requirements if the orphan is adopted abroad?

Answer: If the orphan is adopted abroad, it must be established that both the married petitioner and spouse or the unmarried petitioner personally saw and observed the child prior to or during the adoption proceedings.

The adoption decree must show that a married petitioner and spouse adopted the child jointly or that an unmarried petitioner was at least 25 years of age at the time of the adoption.

Question: What documents are needed to file the petition?

Answer: The following documents are required:

1. Proof of U.S. citizenship of the petitioner
2. Marriage certificate of petitioner
3. Proof of age of orphan
4. Copies of death certificate of the child's parents, if applicable.
5. A certified copy of the adoption decree together with the certified translation, if orphan is adopted abroad.
6. Evidence that the sole or surviving parent in incapable of providing for the orphan's care and has in writing irrevocably released the orphan for immigration and adoption.
7. Evidence that the orphan has been unconditionally abandoned to an orphanage by his or her parents.
8. Evidence that the pre-adoption requirements of the state of the orphan's proposed residence has been met if the child is to be adopted in the U.S.
9. Home study.
10. Biometrics of the petitioner and spouse.

[Disclaimer: This is not a legal advice. Our office offers consultation on all immigration matters.]

Tips of the Week:

1. USCIS filing fees will increase by as much as three times. Call your Congressman

to oppose the fee hike.

2. President Bush in his State of the Nation address called on Congress to pass the comprehensive Immigration Reform Bill so that he can sign it.

3. The Comprehensive Immigration Reform Act of 2007 was introduced in the Senate by the Senate Majority Leader H. Reid. In addition, bipartisan members also introduced the AgJobs Bill of 2007 in the House and the Senate. We will keep you informed of any development.

4. We just received 2 approvals for adjustment of status without interview. In addition we received 4 approvals of clients under PERM of which one case was approved in one day by DOL.

5. Denied I-485 applications may be subject to removal proceedings under current USCIS policy. Please consult your attorney on this matter before filing adjustment of status.

6. Income tax filing is required in the proposed amnesty. Individual Tax Identification Number (ITIN) can be used for filing tax returns and is required before bank accounts can be opened. It is also needed by employers to charge to expense payment of wages. Our office assists clients in obtaining ITIN.

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(Advertising Supplement)

LEGAL RIGHTS



By Atty. Johnson Lazaro

YOU have a family to support, a mortgage and bills to pay. You like your job but you feel harassed, discriminated, and intimidated. Your work place has become a hostile environment. You feel the pressure day in and day out. Your boss is always threatening you, daring you to resign, making unfounded accusations against you. You want to leave but the thought of being unemployed is too scary. You think of your family. What happens to them if you lose job?

Federal and State laws prohibit discrimination based on race, national origin, religion, age, disability and medical condition, gender and sexual orientation. Race discrimination is as prevalent now as it was fifty years ago, during the civil rights movement. The only difference is that it may be harder to sue your employer because they know how to find loopholes within the law. Years of race discrimination litigation have taught employers how to cover their tracks to avoid nasty lawsuits. The really big employers have legal experts also known as "hired guns" on their payroll to insure that any impending legal action is subverted.

The California Fair Employment and Housing Act (FEHA) is the law that prohibits race discrimination. In California, an employer has an affirmative and mandatory duty to promptly investigate claims of harassment and discrimination. To succeed in a discrimination case, the employee must show hard evidence that the boss in-

Your Legal Rights at Work

tended to discriminate. This is often difficult because it is very rare that someone will be able to produce solid evidence of discrimination. An eyewitness who can testify that the employer intended to discriminate will boost a claim of discrimination. However, in some cases, derogatory ethnic comments that were part of a casual conversation are not enough to establish national origin discrimination. If the boss has a rule that prohibits employees from speaking their primary language, or the language they are comfortable speaking at all times in the work place, this may be actionable.

In many discrimination actions, the employer will defend by showing some legitimate, non-discriminatory business reasons for its actions. If a boss had a good faith belief that the employee engaged in misconduct, this may be sufficient business reason. An employer can claim that it had to fire employees to reduce the workforce for economic reasons and this maybe a sufficient defense.

In a case against Northwest Airlines in 1996, the Court ruled that employers must try to reasonably accommodate an employee's religious creed unless it would cause an undue hardship. If your boss starts prohibiting you from doing the rosary during your break time, you may want to see an attorney.

On age discrimination, California law states "It is an unlawful employment practice for an employer to refuse to hire or employ, or to discharge, dismiss, re-

duce, suspend, or demote, any individual over the age of 40 on the ground of age, except in such cases where the law compels or provides for such action." Again, in age discrimination cases, an employee must prove some intent to discriminate on the part of the boss. Your age must have been a "motivating factor" in your boss's decision.

The law also protects against discrimination based on mental or physical disability or a medical condition. Some recognized disabilities include: elevated blood pressure, heart conditions, sensitivity to smoke, AIDS, back injuries, learning disabilities, and alcoholism. There have been cases in the past where obesity formed a basis for lawsuit. If a boss discriminates against an employee who is overweight, the employee may be able to sue.

Sex or gender discrimination is also prohibited by State and Federal laws. An employer may not bar or discharge a person from employment or a training program, nor discriminate in compensation, terms, conditions or privileges of employment based on gender. A person's sex may not be a factor in the employer's refusal to hire, employ or select for a training program leading to employment. And of course FEHA also protects against sexual harassment. Sexual harassment is defined as verbal, physical, or sexual behavior directed at an individual because of his or her gender. Sexual harassment consists of any unwelcome sexual advances,

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