

Trapped – American Families in Limbo

By Kirk A. Carter, Esq.

Harsh immigration penalties put into effect approximately fifteen years ago impose a 10 year bar on anyone “unlawfully present” in the US for more than 365 days. This law perhaps, more than any other, has resulted in a significant increase in the number of undocumented immigrants in the US. The reason is that the penalty or “bar” to re-entry is triggered by the immigrant’s departure, essentially penalizing them for leaving the US.

While the US border has been increasingly secured over the same period, reducing the flow of undocumented workers to the US, this 10 year bar has trapped millions of undocumented immigrants with families south of the border who might otherwise have gone home. Many of these workers perform low skilled jobs that Americans won’t perform even during this period of high unemployment. They are essentially trapped here because if they leave they cannot return for 10 years.

A substantial number of those trapped here are married to US citizens and have US citizen children, or are children brought to the US without papers as minors by their parents. Most Americans think that marriage to a U.S. citizen automatically qualifies an individual for a green card, but it doesn’t! Since 2001, anyone who entered the US without authorization who does not have a grandfathered petition (one filed prior to 4/30/2001) must return to their home country to be processed for their green card. Those who do, trigger the 10 year bar, which can only be overcome by seeking a special waiver which is extraordinarily difficult to obtain. Consequently, most do not take the risk and remain here unable to legalize their status. As a result hundreds of thousands of American families live in a state of limbo, in a state of fear, with their primary member, often the family’s bread winner, living in the shadows as an undocumented alien.

Prior to 4/30/2001, a law existed that enabled such individuals to pay a \$1,000 fine or penalty and avoid leaving the US and thus triggering the bar on re-entry. Prior to 9/11 both Houses of Congress had agreed to extend this law. Unfortunately 9/11 occurred and the extension died in Congress. Since that time immigrants, undocumented and even legal immigrants, have been viewed with suspicion, derision, and have become scapegoats for a variety of America’s ills.

As such, at the moment, there appears to be no political will to rectify this situation and provide those in limbo with a pathway to legalization. In fact, the Senate earlier this year fell short of the votes needed to pass the “Dream Act” which would have extended immigration benefits to the blameless children of the undocumented who were brought to the country when they were minors in exchange for their military service or commitment to attend college. In the meantime, Spouses of US citizens and grown children, many of whom are exceptionally bright and have excelled in school are forced to remain in the shadows, scrape by performing whatever jobs they are able to obtain without papers, avoid interaction with government officials, and pray for the day when Congress will consider their plight.

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