

America - make it your home

Immigration Newsletter from the desk of Wolf W. Kaufmann, Esq.

February 2010

THE LAW OFFICES OF WOLF W. KAUFMANN
11801 PIERCE STREET, SUITE 200
RIVERSIDE, CA 92505
(951) 710-3250 FAX: (951) 750-5062 WWW.WOLFKLAW.COM

Greenbacks and the green card - think of both!

You probably know that our “green cards” are not really green any more, but neither are our “greenbacks.” Our dollar bills have become a little spruced up over the last years, adding a dash of color here and there. Nowhere near the wild colors and designs of the euro or the shekel, but they have become a little fancier. Yet, no matter what the color is, if you talk about a green card you need to talk about money.

This newsletter was supposed to be posted on February 28, but I didn't quite make it. One of the reasons is that I suddenly had a number of clients walk in to my office with money problems who gave me the idea for this month's topic.

Let me make up some example clients here:

Let us call the first one Anja. Anja is in a very bad mood: like so many she fell for the advise of an “immigration consultant,” one of these modern robbers who read a little about immigration law and then go on and take fees from unsuspecting customers for “advice about visa, immigration and your dream of living in California.” Well, the new life in America had come to a sudden stop for Anja:

She had madly fallen in love with her American boyfriend and for months had dreamed about living in California. They had looked at apartments and found a wonderful place near the Pacific where they would move in right after the wedding. They married and then Anja consulted the “immigration agency” about getting a green card as soon as possible. “No problem,” the agency told her, “just give us a couple of thousands of euros and we will process the application for you. Because you are the wife of an American citizen there will absolutely be no problem.”

Anja did as she was told and forked over her lifetime savings, which admittedly were not really much, and waited for the green card application to be approved. Then suddenly a very official letter arrived, telling her that her application had been denied and that she had thirty days to leave the country.

What has happened? USCIS found that there was no proof that her husband could support her financially and that therefore she was likely to become a public charge and she was denied permanent residency. What sounds so dry in legal speak was devastating for Anja. The “agency” had not bothered to make sure that her husband had enough income or assets to be able to support her.

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I surfed the web a bit and found it amazing, that while many “immigration websites” tell you about the possibility of applying for a green card when your spouse is an American citizen, many omit to mention that among the many conditions that have to be fulfilled, one of them is that the citizen spouse must either prove to have enough income to support the spouse (and their children if there are any) or have enough assets, or must have found someone else who would be willing to do so.

Within the last couple of months I have seen many clients with exactly the same problem: they prepared to move to America, they married their citizen spouse, and then they realized they had not enough money to qualify for a green card. In one case it was dramatic, the client had already canceled her lease for her apartment in Europe, had already booked a flight and was set to start a new life in America.

How much money do you need? - Marriage cases

Let us look first at the amounts you have to prove to obtain a green card, then we will talk about how much money you really should have.

The law appears not to give a set number, but does state: “the alien must prove that he or she is not likely to become a public charge in the United States.” That means you have to prove that once you are here, the government will not have to pay for your maintenance. In those cases where you married an American citizen and apply for the green card based on that marriage, the government wants your spouse to sign a contract with the government in which the spouse promises to pay any and all costs you might incur. This contract is called an “affidavit of support.” If your spouse will not sign it, your green card application will be denied.

The government also wants to make sure, that if your spouse signs that contract, he or she will actually be able to honor it. Therefore the government wants to make sure that your spouse either earns enough money or has enough assets to be able to honor the contract. Every year the government publishes a schedule with amounts of annual income that defines the “poverty level.” People earning less than the amount are officially considered “poor.”

The immigration authorities now use this schedule to evaluate if a citizen spouse earns enough money to support the alien spouse and their children and anyone else the citizen is obliged to support. They require that the citizen spouse earns at least 125% of the amount that defines the poverty level.

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The poverty level amounts vary according to the number of people that need to be supported and where they live. To make things easy, I will give you some examples based on 2008 numbers:

Take Jose and Maria, a newly wed couple without children. Jose is the citizen. He needs to show that he earned at least \$ 18,212 in the last year and will do so in the future. Because sometimes people might have extraordinary earnings in one year, but not in any other year, the government wants to see if Jose actually earned that much in the last three years. To prove his income, Jose has to submit transcripts of his income tax returns or similar proof.

Jose did earn \$ 23,000 last year and slightly less in the years before. His employer will sign a statement that Jose most likely will earn the same amount this and next year. Jose can sign the contract and apply for the green card for his wife.

Now take John and Olga. John is the citizen and earns \$ 14,000 per year. Olga, in her home country, earned \$ 45,000 per year. She plans to take a job in the U.S. which will pay about the same amount. John and Olga will have a problem: For purposes of the contract, Olga's past or future income will not be counted. Therefore John can only prove \$ 14,000 which is less than the \$ 18,212 he would need.

Let us look at one more couple before we deal with John and Olga. Take Sebastian and Rachel. Rachel is the citizen, she earns \$ 23,000. But Rachel has been married before and has two children, 8 and 13 years old. To be able to support Sebastian, she would not only need to show enough income for two people, but actually for four, because she also must be able to support her children. Therefore, she needs to prove not \$ 18,212 but \$ 27,562 which is 125% of the poverty level for four people. As you can see, Rachel will not be able to prove that income.

What can Rachel and Sebastian and Olga and John now do?

John only earns \$ 14,000 per year because he actually is in semi-retirement. He earned very well in the last 20 years and owns a house that is worth \$ 1 million and has savings of \$ 300,000 in cash, bonds and stocks in the bank. Instead of proving wages, John can use his assets to prove that he will be able to support Olga. In addition to his tax transcripts he will have to bring statements from his bank, from a real estate appraisal etc. to satisfy the USCIS. Usually you need to prove assets of about five times the required earnings, that would mean that John would have to prove he has assets of $5 \times \$ 18,212 = \$ 91,060$. Because he owns much more, he will have no problems.

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But what can Rachel and Sebastian do? All of Rachel's savings are \$ 455 in her checking account and an old car worth \$ 2,000. In fact, she owes the bank \$ 50,000 in a loan. Rachel must look for someone else who is willing to sign the contract. Luckily, her mother really likes Sebastian and is willing to do so. Rachel's mom, let's call her Lucy, is a widow and earns \$ 39,000 per year. The government will require that she prove she is able to support herself, Sebastian and Rachel. So she must be able to support three people, the minimum income for this is \$ 22,887. She earns enough, so she can be the "joint sponsor" for Sebastian.

Enough numbers, this is getting too complicated...

If you feel overwhelmed with this information, don't worry. I studied law because I knew I could never take a job where any advanced math skills would be required. I know the rules and for the numbers I rely on my faithful computer. But I agree that the rules concerning the "support" for aliens can be very complicated. That is why you should not do this alone or let an "agency" or "immigration consultant" take care of this, but you should let an attorney (with his faithful computer) handle your affidavit of support.

In addition to those rules I have tried to explain above, there are many more rules concerning joint sponsors, household members, assets etc. If I would talk about them all, nobody would want to read my newsletters any more. But let's talk about money once more:

How much money do you *really* need?

Now we will assume that another couple, let us call them Nicole and Jacques, won the green card in the lottery. Their best friends, Joliette and Ivan will also emigrate to America, because Ivan was offered a job at an university in California. Both couples decided to move to the same town, near Los Angeles. Both asked me how much money they would *really* need to make it in America. What would I answer?

Nicole and Jacques do not have any job offer yet. They found out that it is almost impossible to get one as long as you are not living in the country. So they decided to move to California and go job hunting right away. I will tell them they will need to have enough money to be able to pay for the initial costs of settling down and for at least six to twelve months of living expenses. In this time of high unemployment it might take a year until they can find a job which will pay them enough.

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So my calculation will be: They will rent an apartment that will cost \$ 1500 per month in rent. They will need to put down a security deposit of two months' rent before moving in, that is \$ 3,000. They will need at least one car to be able to go job hunting, a reliable used car will cost at least \$ 5,000. They will need to pay for car insurance, that is another \$ 1000 up front. They want to have health insurance, which will cost them \$ 1000 per month. They will bring some stuff from France, but want to buy some furniture in California and also will need some job-hunting clothing. They figure they will spend \$ 4,000 on these items. So for car, rental deposit, insurance, furniture etc. they will need \$ 13,000 right up front. They will spend about \$ 1,000 per month for everything else, so they will need living expenses per month (health insurance, rent and other expenses) of \$ 3,500 per month.

I will advise them to bring at least \$ 34,000. Because there always can be unforeseen events, I think they would feel safer if they brought at least \$ 50,000.

What if you have a job offer?

How about Joliette and Ivan? Here the situation is very different. Ivan will earn \$ 87,000 per year and will be paid in monthly payments beginning after the first month of work. Assuming they have exactly the same expenses as Nicole and Jacques, I would advise them to bring the initial \$ 13,000 plus the living expenses for one month of \$ 3,500. With a little reserve for emergencies they will be fine if they bring \$ 20,000.

All these numbers of course are very individual amounts. You have to sit down and very carefully calculate the numbers that will be valid for you. You will have to find out as much as you can about the costs of living, insurance etc. in the place you will plan to move to. You will have to be realistic about how much you will be able to change your lifestyle to a "saving mode" if you now are used to live off a much higher salary. And don't forget that, at least as long as you don't have a job, you might have to pay for many things that are either employer paid or free in your country, such as health insurance. Also be aware that new immigrants hardly ever qualify for a loan, so that in the beginning you will have to pay cash for a car etc.

In one of our next newsletters I will again talk about money: We will look at the E-visa and how much money you will need to be an "investor."