

# America - make it your home

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

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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

## DO IT YOURSELF?

### Involuntary vacations in a foreign country.

This week I had to fix some lights in my house. So I went to the nearest Home Depot and got a few little things. Anything with less than 10 parts might be within my very limited abilities of fixing technical problems. I always marvel at the many gadgets and things you can buy and imagine how much money could be saved if I could renovate our bathrooms or install new flooring myself.

Well, I cannot. I rather rely on someone who knows what he is doing, especially when it comes to potentially dangerous things like the electrical system in my house. The more amazed I am when I see how many people think they can fix something as important and difficult as their future in the United States.

This week I was confronted with several such attempts at do it yourself-ing immigration. The clients presented me with dire situations into which they had maneuvered themselves - or, to be more angry about - they had been maneuvered into by modern day charlatans.

The first had relied on a self appointed "expert" in immigration law, a "notario" or "immigration consultant." He had paid him a fee, supposedly less than a real attorney would have charged, and the "consultant" promised to fix the immigration problem.

The idea was that client would apply for an immigration visa in the country of his birth. He had to leave the United States to do so, and would not be allowed to come back unless he obtained a "waiver" of his inadmissibility. This kind of case is one with about the highest possible risk in immigration law. You can compare it to brain surgery with a 50% chance of survival. Now, who would trust such an operation to someone who never studied medicine?

The immigration consultant promised the client that he would obtain the waiver and that the client could return

from the foreign country the next day.

The client happily said good bye to his wife and baby and traveled to the foreign country for the interview. In the interview the consular officer decided that the application the "consultant" had submitted was missing the necessary evidence.

He gave the client the chance to bring the necessary evidence within the next 30 days and promised to decide the application in about 12 to 15 months.

The client was dumbstruck. Now it will take 12 to 15 months before he might be able to enter the United States again. He will be separated from wife and family for at least a year.

He could have avoided this involuntary vacation if he had relied on someone who knew what he was doing.

Another client made a similar mistake. He also traveled to a foreign country, thinking that he could easily take care of the necessary visa for the return by himself. But he had overlooked a small problem: By leaving he had abandoned his previous status and now finds himself in the same position as the first client: stuck outside the United States for a long time, possibly for years. He also might have avoided this vacation if he had obtained a consultation from an immigration attorney before he had left.

Unless you are prepared to while away weeks, months or even years on foreign beaches, do not rely on internet information or so called "immigration consultants." Your future in the United States is too important.

## CONDITIONAL RESIDENCE

### Divorce need not be the end of your life in the U.S.

This week the Law Offices of Wolf W. Kaufmann obtained permanent residency for an alien living in the United States for less than two years after being married to an American citizen who had decided to file for divorce.

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If you have obtained your “green card” through marriage with an American citizen, you know that for the first two years after the marriage, you only are a “conditional resident.” After the two years you must apply to have the “conditions removed” to be able to keep your “green card” and to stay in the country. Many people consider this regulation to be a demand to stay married to that citizen for at least those two years, “or else.”

In fact, this regulation was included in immigration law about 13 years ago to battle what is called “marriage fraud:” people who would pay to marry a citizen with whom they had no intention to live together just to obtain residence. Once they received their green card, they would quickly divorce. Now the government presumes that if the marriage did not last these two years, it was not entered in good faith and therefore the residency of the alien spouse should be terminated.

Most people know, though, that even the greatest love sometimes does not last. Not even two years. In that case, the alien spouse is in a dire position: often she has given up her job, her home, everything in her home country. To be forced to move back could be an economic and personal disaster.

The law has recognized this dilemma and added a provision, that a spouse who was divorced within those two years can obtain a waiver to the requirement that both spouses must apply for the removal of conditions. Other exceptions cover those who actually have become a victim of domestic violence while married to the citizen.

However, there is one big black hole that might swallow the unsuspecting alien: What if the two years are up while you are still married, but already in divorce proceedings?

The quirk in the law is that you only can obtain the waiver if your divorce already has been finalized. Divorce proceedings, however, often take half a year or longer. What if your citizen spouse filed for divorce only a few weeks before the two years are up? There is no way the divorce will be finalized in time, and therefore you cannot obtain a waiver. On the other

hand, your spouse might not want to cooperate with you any more.

In this case, sadly, many alien spouses fall into the black hole and their conditional residence is being terminated.

The law, however, requires that you show that the marriage was a “bona fide” marriage when it was entered into. It does not say that the marriage really has to last for two years. What you need to do is overcome the presumption the government has taken, that it was not a bona fide marriage.

The more you can convince your spouse to cooperate with the necessary application, the more likely you will be successful. In our latest case we were able not only to convince the citizen spouse to cooperate, but also to meticulously show that the couple had lived a bona fide marriage for most of the two years together, even though they had now separated. The government accepted our arguments and evidence and granted the removal of conditions. While the couple will likely be divorced in a few months, the alien spouse at least can stay in the United States and build his future.

## INVESTOR VISA

### The strong hands are coming

Many years ago, when I started saving for my retirement, I read a book written by one of those few billionaire investment gurus about the stock market. We have seen some incidents in the last 15 years where the news screamed that everyone was selling on Wall Street and the stock market was awash in red. What never is being told is, that there are as many shares being bought as there are being sold. The stock exchange is a market, so if people are selling their stock there must be some who buy them. Otherwise the market would not work and people could not get rid of their shares.

So who is it, who is buying stock when it seems that there is another Black Friday at hand and everyone is trying to flee into cash? The author said: those are the

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“Strong Hands” who take the stock from those hands weakened by fear, overexposure etc. The “strong hands”, those who buy cheap, at the bottom, actually will be those who make the most money in the market.

What does this have to do with immigration? As you know, the economy in the U.S. has been in a deep crisis for the last couple of months. Many thousand jobs have been lost, many businesses shuttered and many homes have been foreclosed. Not the right time to dare to immigrate and start from a scratch?

It might not be the right time for those who depend on an employer to find work and a green card. Jobs have become rare. However, those who plan to invest might actually think of showing their “strong hands” now:

If you are confident that your new business will be able to generate profits in this economy, now probably is a good time to start it: real estate is as cheap as never before in the last 10 years. Wages for employees are reasonable, any raises having been held back by the bleak job market. Taxes are low to stimulate the economy. The dollar is in a deep pit. And interest rates are at a historic bottom.

There are exciting opportunities for those brave and “strong” enough to invest in the American economy. Immigration law knows several possibilities to gain temporary or permanent residency for those who invest in a new or existing business, or who trade with foreign countries.

Potential immigrants can choose between obtaining permanent legal residency (a “green card”) by investing a minimum amount of either \$ 500,000 or \$ 1 million to create a new business and qualified American jobs, to restructure an existing business, or to keep an existing business and its jobs from going under. Investment opportunities include investments in specially designated areas and projects and do not even require active management in every case.

Non-immigrant status can be obtained by nationals of a long list of countries which have engaged in treaties with the United States to further international trade or commerce. Treaty investors and traders may stay in the

United States for many years as long as they direct and control their businesses. They can in some cases bring other essential workers from their home countries. Spouses of investors and traders can obtain a separate employment authorization.

Non-immigrant investors can obtain the visa by investing much smaller sums than required for permanent residency, sometimes for less than \$ 50,000.

Each case needs very careful planning. Immigrating by investment is nothing for “weak hands.” But if you have “strong hands,” we will be happy to help you make your business dreams come true and to settle in the United States. Be a part of this exciting economy when it finally will grow again.

## ALTERNATIVE DESTINATION

### Oh Canada!

Many immigrants who have been frustrated by the long and seemingly impossible immigration process in the United States have been tempted to apply for an immigrant visa to Canada instead. While Canada surely is not the “51<sup>st</sup>” state of the U.S., the Canadian way of life, standard of living, and legal and economic basis are very similar, if not identical, to the American ones. Therefore Canada has experienced a boom in immigration in the past years, helped by very liberal immigration laws. Some immigrants even have considered Canada a “parking area” to await their eventual immigration into the United States. However, Canada lately severely restricted immigration for many applicants. The list of those applicants who may apply for immigration without having first secured employment has been substantially shortened. More information is available at the website of the Canadian immigration authorities

[www.cic.gc.ca/english/index.asp](http://www.cic.gc.ca/english/index.asp)

## WE WISH ALL OUR CLIENTS A HAPPY THANKSGIVING!

Please remember our offices will be closed November 26 through November 29 for Thanksgiving.