

## Deceased Mom Gave Green Card to Daughter From The Grave

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Another miracle happened with the Law Office of Joseph Famuyide in the middle of everything. It was an unprecedented victory for this immigrant before the Immigration Court in New York. A mother who died in 2007 gave a green card to her daughter from the grave in court through the ingenuity of Attorney Famuyide. It was a sweet end to a case riddled with tales of tragedy, frustration and misery, but at last, it ended with celebration.

It all started in 1998 when a U.S. citizen sister petitioned for another sister to migrate to the United States. The names of the immigrant sister's husband and children were included in the petition as derivatives. The process was going to take about 10 years to mature into green cards for the entire family. While the case was pending, the family migrated to the United States waiting for their priority date to be current.

Unfortunately, during the pendency of the petition, the principal beneficiary died in 2007 leaving all the derivatives spouse and children in limbo as to their future regarding the petition. It was devastation for the entire family. It was around the time their priority date became current. The husband of the deceased and the children consulted a notable attorney in New York who filed application for adjustment of status for the family, but about 6 months later all their applications were denied.

The U.S. Citizenship & Immigration Services informed the applicants that under the current law at that time, the petition died with the principal beneficiary. The derivative beneficiaries were devastated. They spent all their savings to achieve nothing. To add salt upon injury, the U.S. Citizenship & Immigration Services filed a Notice to Appear before the Immigration Court for removal proceedings against all the parties.

It was at this stage that Attorney Famuyide was retained to represent the parties before the immigration court in New York.

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It will be recalled that under the old rule once a petitioner or principal beneficiary died, the petition died with him. The substituted sponsor route carried onerous requirements which were difficult to meet.

According to the Department of Homeland Security Memo released on December 16, 2010; "For many years, USCIS had taken the position that the law did not permit the beneficiary of a visa petition to obtain approval of the petition if the petitioner died while the petition remained pending. See *Matter of Sano*, 19 I&N Dec. 299 (BIA 1985); *Matter of Varela*, 13 I&N Dec. 453 (BIA 1970)."

On or about October 28, 2009, the President signed the amendment to Section 204(I) of the Immigration and Nationality Act into law. Under the amendment popularly referred to as the "Elimination of the Widow's Penalty", a beneficiary widow is allowed to self-petition for green card using the approved petition filed by the deceased spouse. It was during the time that the cases of Attorney Famuyide's clients were in court.

On a careful review of the entire amendment to the law, Attorney Famuyide discovered a loophole which was unknown to many lawyers under which his clients could benefit. The Congress extended the amendment not only to widows but many other groups of immigrants including those whose principal beneficiary died before they could obtain their green cards provided they meet certain requirements.

According to the USCIS Memo analyzing the amendment to the old law, Congress under the "New section 204(I) of the Act changes this governing law with respect to an alien who is seeking an immigration benefit through a deceased "qualifying relative." Section 204(I) permits the approval of a visa petition or refugee/asylee relative petition, as well as any adjustment application and related application, if the alien seeking the benefit:

Resided in the United States when the qualifying relative died; Continues to reside in the United States on the date of the decision on the pending petition or application; and

Is at least one of the following: The beneficiary of a pending or approved immediate relative visa

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petition; The beneficiary of a pending or approved family-based visa petition, including both the principal beneficiary and any derivative beneficiaries; Any derivative beneficiary of a pending or approved employment-based visa petition; The beneficiary of a pending or approved Form I-730, Refugee/Asylee Relative Petition; An alien admitted as a derivative "T" or "U" nonimmigrant; or A derivative asylee under section 208(b)(3) of the Act.

According to the analysis of the Department of Homeland Security, "Section 568(d) of Public Law 111-83 does not expressly define the "qualifying relative." From the list of aliens to whom the new section 204(l) applies, however, USCIS infers that "qualifying relative" means an individual who, immediately before death, was:

The petitioner in a family-based immigrant visa petition under section 201(b)(2)(A)(i) or 203(a) of the Act; The principal beneficiary in a family-based visa petition case under section 201(b)(2)(A)(i) or 203(a) of the Act; The principal beneficiary in an employment-based visa petition case under section 203(b) of the Act; The petitioner in a refugee/asylee relative petition under section 207 or 208 of the Act; The principal alien admitted as a T or U nonimmigrant; or The principal asylee, who was granted asylum under 208 of the Act.

Attorney Famuyide applied to obtain green card before the immigration court for these immigrants using the October 28, 2009 law. Surprisingly, many of the lawyers were not aware of the portion of the law relating to other beneficiaries apart from the widows.

It was the husband of the deceased principal beneficiary's case first. The cases were before different judges. Attorney Famuyide won and he was issued his green card after over 14 years in the United States without status. Few weeks ago, the case of the daughter of the deceased was also approved. Another happy ending to cases that started without any hope for victory.

This article is for your information only. It is not a representation of any future outcome. If you need legal assistance, please feel free to contact Attorney Famuyide at 718-647-6767 or send email to [jfamuyide@aol.com](mailto:jfamuyide@aol.com) .

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