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April 20, 2009

Jane Arellano
District Director
USCIS
6th Floor
300 No. Los Angeles Street
Los Angeles, California 90012

Re: Phairoh CIESIOLKA (Mother) A031 306 232 dob 6/13/1937
Andy (Anurak) PROMSIRI (Son) A021 420 596 dob 3/04/1961
Kevin (Anirut) PROMSIRI (Son) A021 420 595 dob 3/12/1968

Dear Ms. Arellano,

I am writing to you as the attorney of the above three individuals. Signed G-28 forms are attached.

Briefly, this matter concerns a mother and her two sons who immigrated 34 years ago as immediate relatives of a U.S. husband/father. Now, after they have lived most of their lives in the U.S., the USCIS has issued Notices to Appear (NTAs) before an Immigration Judge. The entire family faces removal on the ground that the mother's 1975 divorce from her first husband should not have been recognized as valid by the INS and the State Department. Because of this mistake on the government's part, the NTA alleges that the mother and her two sons should be removed from the U.S. and deported to Thailand.

We respectfully request that you cancel the NTAs for humanitarian reasons, and not punish these individuals because of a mistake made by our government over 30 years ago.

The Facts

In 1969, Mrs. Ciesiolka's first husband entered the U.S. as an F-1 student. She and her two sons joined him from Thailand on March 23, 1971 on F-2 visas.

In 1975, Mrs. Ciesiolka and her first husband obtained a divorce from the Royal Thai Consulate General. She married Paul J. Ciesiolka, a U.S. citizen later that year. The U.S.

Embassy in Thailand approved her immigrant visa based upon their marriage. The Embassy did not question the validity of her divorce.

The INS granted the two boys applications for adjustment of status through their stepfather in 1976. Like the State Department, the INS did not question the validity of the divorce.

Since 1983, the mother and her two sons have applied to the INS for naturalization. The agency has had numerous opportunities to examine the 1975 divorce decree. Now, in 2009, nearly 34 years after attaining permanent residence, they have been told to appear in Immigration Court for removal. Their NTAs allege that the divorce certificate issued by the Thai Consulate in 1975 was "invalid" and should not have been given effect by the INS and the U.S. Embassy in Thailand.

Andy Anurak Promsiri

Andy first applied for naturalization in 1983 and passed his citizenship exam. In 1985, INS asked for his birth certificate as well as the marriage and divorce certificates of his parents. He submitted the documents and for the next 8 years heard nothing from the INS.

In 1993 he reapplied for naturalization. On March 29, 1995, he was scheduled for an Oath Ceremony. However, on the day before the ceremony, his mother received a telephone call from the INS saying her son should not appear at the ceremony due to a "problem with his paperwork". Following this phone call, Andy made many unsuccessful inquiries with the INS regarding the status of his application.

In 1998, Andy applied for naturalization for the 3rd time. This time, his brother Kevin and their mother also applied for naturalization. Again, as far as the family is aware, their applications have never been approved or denied.

Andy has lived in the U.S. since the age of 10. He graduated from UCLA with a Bachelor's degree in Psychology. He is now 48 years of age and is an Assistant Director of Financial Aid at [REDACTED]. Andy received numerous awards for outstanding work performance at [REDACTED]. For the past 26 years, he has assisted college students both domestic and international find financial aid to attend college. Andy also conducts outreach sessions for both community college and high school students on weekends and evenings.

Kevin Anirut Promsiri

Kevin applied for naturalization in 1993. In 1995, he attended the INS interview and passed the examination. However, the interviewing officer looked at her computer and noticed something wrong. She told him that the supervisor was unavailable and to go home and wait for further instructions in the mail. Kevin never received any correspondence from the INS.

In 1998, he reapplied for naturalization and was interviewed in 1999. He was told INS would contact him. Now, 10 years later, he has been placed in removal proceedings.

Kevin has resided in the U.S. since the age of 3. He is now 41. Kevin earned a Bachelor's degree in Business Administration from the University of California, Riverside. He is the Branch Manager of [REDACTED]. Kevin has been employed by the bank for over 15 years. He has received multiple awards for being a top performer. Kevin has participated in numerous community activities on behalf of [REDACTED].

Phairoh "Pai" Ciesiolka

In 1979, Pai and Paul Ciesiolka were divorced. In 1988, her first husband died.

In 1998 Pai applied for citizenship. In 1999, she received a phone call from INS telling her that her son should not appear at his scheduled oath ceremony because there was a problem with her divorce certificate issued in 1975. However, neither she nor her sons ever received denials of their naturalization applications.

Pai is 71 years old. She retired after working as a financial consultant for over 10 years. She currently does volunteer work in the Thai-American community and will soon receive a letter of recognition for her work from the Mayor of Chino Hills. Pai lives with her son Kevin in Corona.

Request for Prosecutorial Discretion

We respectfully request that you exercise your prosecutorial discretion and cancel these Notices to Appear as improvidently issued.

Andy has a master calendar hearing scheduled for June 3, 2009. Kevin and his mother are scheduled to appear before an Immigration Judge on June 24, 2009.

In a memorandum to District Directors dated November 17, 2000, the INS Commissioner stated as follows: "As a general matter, INS officers may decline to prosecute a legally sufficient immigration case if the Federal immigration enforcement interest that would be served by prosecution is not substantial." The memorandum goes on to identify "triggers" to help District Directors identify cases which are suitable for prosecutorial discretion. The triggers which are present in this matter include:

- 1) The fact that all three persons are "lawful permanent residents";
- 2) The mother, at age 71, is an "elderly alien";
- 3) All three persons qualify as "aliens with lengthy presence in the United States (i.e., 10 years or more) – Here each family member has been present in the U.S. for 38 years;
- 4) The two sons qualify as "aliens present in the U.S. since childhood". Kevin

has lived in the U.S. since the age of 3, Andy since the age of 10.

Clearly, this case meets the criteria for the exercise of prosecutorial discretion.

Moreover, additional favorable factors should be considered.

Both the U.S. Embassy in Bangkok and the former INS accepted the divorce certificate issued by the Thai Consulate as valid in 1975. It would be extremely cruel to deport Andy, Kevin and their aged mother on the ground that two separate government agencies both made a mistake in accepting a document presented by the mother in good faith 34 years ago.

Furthermore, neither the mother nor her sons are eligible for relief from removal. Had the government told the mother in 1975 that her divorce was invalid, she could have easily remedied this by obtaining a dissolution of her first marriage in Superior Court and getting remarried. Since the government took 34 years to charge her with being removable, there is no longer any way for her or her sons to remedy this situation.

Removing them from the U.S. at this late date would destroy everything that they have worked to achieve since 1971. Each member of the family, in his or her own way, has made a significant contribution to the United States. Both Andy and Kevin are university graduates, homeowners and taxpayers. They provide support for their aged mother.

I believe that such sympathetic humanitarian circumstances warrant a favorable exercise of discretion on your part.

I look forward to your response to this request. I would be pleased to provide any additional information on this matter.

Thank you.

Sincerely,
Law Offices of Carl Shusterman

Carl Shusterman