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Widowed immigrants fight automatic deportation

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Two weeks after Agnieszka Bernstein's husband died of a heart attack at 32, she dragged herself to her scheduled interview with an immigration officer armed with photographs, documents and bills to help prove her marriage had been legal and entered into as a genuine union.

At the end of the interview, the officer said he would consult his supervisor about her case. Later, she received a letter denying her petition for residency in the United States. It was dated the same day as the interview.

"He didn't have the courage to tell me," said Bernstein, who adopted the nickname Aggie after she came to the U.S. in 1998 from Gliwice, Poland, to work as an au pair.

The denial was automatic because immigration authorities' interpret a legal provision known as the "widow penalty" as requiring that immigrants be deported if their American spouses die before their green card applications are approved, and before they are married two years.

The provision has been further complicated by a law aimed in part at making it more difficult for foreigners to gain residency in the U.S. by entering into sham marriages. The law allows only rare, narrow exceptions. In Aggie Bernstein's case, it meant she had to be deported even if her marriage was genuine.

By one lawyer's count, about 200 immigrants — mostly women, but a few men too, from all corners of the world, of all ages and economic backgrounds — are threatened with deportation under this law. Despite efforts to change it in courts and the U.S. Congress, immigration authorities persist in applying the penalty.

Those fighting the law include:

- Diana Gecaj Engstrom, 29, of Kosovo, who met her husband Todd Engstrom in her home country when both worked for the United Nations; he was later killed in Iraq;

- Ana Maria Moncayo-Gigax, of Ecuador, whose husband John Charles Gigax was a U.S. Border Patrol agent killed in the line of duty;

- Carolyn Rob Hootkins, a Briton and former head chef for Prince Charles and Princess Diana, whose actor husband, Bill Hootkins, died of pancreatic cancer.

The widows feel trapped by a system they feel is heartless. The government says the law is the law.

"To have a spouse die unexpectedly, and then we are punished on top of that for a misfortune that happened to us," said Aggie Bernstein, 34, whose husband Bryan died in 2006 just short of their first anniversary. She remains in Spring Valley, about 30 miles north of New York City, working part time as a dental assistant and cleaning houses — at least until her work permit runs out.

"Whenever I think about it and write about it I'm just bitter at the way we were treated," she added.

The law is under legal attack all over the country, including a class action lawsuit filed in Los Angeles and individual litigation in Georgia, New Jersey, New York, Massachusetts, Maryland, Missouri, Ohio and Texas.

At the same time, two Democratic lawmakers have introduced bills in Congress that would allow the widow's petition for residency to be evaluated on a case-by-case basis, even when the spouse dies before two years of marriage. Separately, Homeland Security Secretary Janet Napolitano has ordered a review of the law.

"It puts a lot of women in a bad position — when you know deep down you haven't done anything wrong," said Diana Engstrom, whose husband was killed while working as contractor in Iraq when his convoy was hit by a rocket-propelled grenade.

Critics argue it is unfair because it doesn't give widows a chance to prove their marriage was not a sham, and because it is dependent on the system's efficiency: Those whose applications are approved by the United States Citizenship and Immigration Services before their spouses die can remain in the U.S. even though they were married for less than two years.

Fate conspired against widow Irina Gorovets every step of the way.

She told her story on a recent rainy day, sitting in her cramped little apartment overlooking New York's City's East River. Photos of her husband Emil, a composer and singer, are everywhere, along with his records, books and papers. It is where they shared happy and sad times together, and where she now spends all her time working to keep her husband's legacy alive, cataloguing his music and transferring his songs from records to CDs.

She met him when she visited the United States from Moscow in 1998. Then in her mid-50s with two marriages behind her, she was planning a long visit and signed up for an English language course.

A friend told her about Emil Gorovets, widowed and lonely, and suggested they meet. Emil had emigrated from Russia in 1972 and become a U.S. citizen. His songs, mainly in Yiddish and Russian, made him famous in the Soviet Union and over the years he was dubbed the "Russian Caruso," "Russian Frank Sinatra" and "the last troubadour of Yiddish poetry."

At first, Irina Gorovets was not a fan of his music. But she added, speaking through an interpreter: "It was impossible not to fall in love with someone like him."

They decided to marry the next year, but Emil's oldest son died of cancer at 46, and they postponed. Had they done it then, Irina would have been married more than two years by the time of her husband's death and allowed to stay in the United States — or at least allowed to file for residency on her own behalf.

Instead, they married in February 2000. Two months later, he became sick for the first time, passing out and toppling over onto his wife as they climbed the stairs from the New York subway.

"He was pale and heavy and I was scared," she said.

At the hospital he was diagnosed with diabetes and kidney failure. She was tested to see if she could donate a kidney, but was told she was not compatible.

On Aug. 17, 2001, she brought him back from having dialysis at the hospital. He asked for some watermelon and sat on the sofa.

"He had a bite and his head dropped down, and that was it," she said.

Her interview with Immigration Services took place in October. She told the officer her husband had died and he told her to go home, without ever telling her she would be denied residency.

When the decision eventually came, the wording was brutal: The letter listed the date of the death of her husband Emil and noted that, "as such, your marital relationship with Mr. Gorovets has ceased (sic) to exist as of that date."

Lawyers for the nonprofit New York Legal Assistance Group filed a lawsuit on Irina's behalf in November, and said removal proceedings against her client are on hold, said one of the lawyers, Caryn C. Lederer.

Lederer and other widows' lawyers also are looking to a decision in the case of Osserritta Robinson, a Jamaican woman whose husband Louis Robinson was one of 11 people killed when a ferry crashed into a Staten Island pier on Oct. 15, 2003.

Robinson plans to appeal the latest ruling against her to the U.S. Supreme Court, and her case could be the first concerning the widow penalty to reach America's top court.

So far, lower courts' rulings have been mixed, and when courts have ruled in favor of the widows, the U.S. government has appealed every time.

"We recognize that the law causes hardships for a few widows or widowers. However, we have to follow the law passed by Congress and we cannot change the statutory requirement on our own," said Chris Rhatigan, spokeswoman for the U.S. Citizen and Immigration Services.

At the root of the problem is a 1970 court ruling that stated that a husband's death stripped the wife of her position as spouse, meaning she no longer qualified for a green card. Rhatigan referred to a 1990 law that narrowed that ruling's

scope, saying a widow married to a U.S. citizen for at least two years can file a petition for a residency permit on her own behalf.

The immigration service's view is challenged by Brent Renison, a lawyer in Portland, Ore., who has created a support network and is taking the lead in the widows' class action suit. At least 200 people are affected by the widow penalty, he estimates.

"There's no law that says that if a death occurs, it automatically denies a pending application," Renison said. "We're just looking for a chance to show that these marriages are bona fide. If they want to interview people, look at documents, they can do this."

Meanwhile, in Congress, Rep. Jim McGovern of Massachusetts and Sen. Bill Nelson of Florida introduced parallel bills on Thursday that would do away with the automatic residency denial, said a spokesman for McGovern's office.

Napolitano ordered the review of the law shortly after taking office in January. Homeland Security spokeswoman Amy Kudwa called the widow penalty "an issue of concern."

Friends and acquaintances suggested to Aggie Bernstein that she marry again, just to get legal papers allowing her to remain in the U.S., but she rejected the idea. "Believe me, I've had propositions too, but I don't want to do that."

Nor does she want to leave the place where she made her home with her husband.

"This country became my home," she said. "This is where Bryan and I planned to live."

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