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Immigration rule adds to widows' grief

Of the many ways that U.S. immigration law is unfair to foreigners who are trying to become citizens, the "widow's penalty" is among the most cruel. The penalty -- deportation -- is invoked with little rhyme or reason when an immigrant's American spouse dies before the couple has been married for two years. The law is meant to prevent sham marriages, but U.S. immigration authorities have been enforcing it with virtually no exceptions. Efforts in Congress to change the law have failed in the past, but with its new Democratic majority, the 111th Congress should try again.

Genuine marriage

Aggie Bernstein, who came to the United States from Poland and lives near New York City, is among the hundreds of immigrants across the country who live under threat of deportation. Ms. Bernstein's husband died three years ago from a heart attack at age 32, just short of their first anniversary. Although Ms. Bernstein showed immigration officials pictures and documents to prove that her marriage was genuine, her residency petition was denied -- automatically. Lucky for her, Ms. Bernstein has been allowed to remain in the country on a work permit -- she is a dental assistant -- but she knows that a deportation order can come any day. That's a pity.

The law is intended to weed out fraudulent marriages, and so is written to allow for interpretation and discretion. All too often, though, U.S. immigration officers interpret the law narrowly and opt for deportation. The results can be devastating and heartbreaking, sometimes ensnaring couples' U.S.-born children in a deportation dilemma. The policy compounds the tragedy of a woman who has lost her spouse with an order to leave the country and abandon the dream of citizenship.

Law unclear

There is nothing magical about being married for two years. Reaching that arbitrary threshold is no guarantee that a marriage is genuine -- or that it is fake, either. The fact that a woman suffers the untimely death of a spouse before reaching her second anniversary should not be a barrier to citizenship. Since the intent of the two-year rule is to discourage bogus marriages, Congress should rewrite the law to better define the conditions and circumstances that can be considered fraudulent.

In several states, although not in Florida, lawyers have filed class-action lawsuits to challenge the fairness of the law. Although rulings have gone both ways, sometimes favoring the government and at other times the widow, the government always appeals when it loses. Congress can settle this by rewriting the law to make its intentions clear.

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