

P A R R I L L I

R E N I S O N

# DEATH HAS NEW MEANING FOR SURVIVING RELATIVES

By Brent Renison

# Widow(er)s of U.S. Citizens

## Pending Cases on Oct. 28, 2009

- ❑ Still pending, MTR granted or pending
- ❑ On BIA appeal or federal court
- ❑ Class Plaintiff or Class Member (Hootkins)
- ❑ Petition approved before death

## Auto Conversion

- ❑ 8 CFR 204.2(i)(1)(iv)
- ❑ Unlawful presence does not apply
- ❑ Consent to Reapply for admission after Removal exercised favorably

# Widow(er)s of U.S. Citizens

## Not Pending on Oct. 28, 2009

- ❑ Must re-file I-360
- ❑ May file I-485 concurrently
- ❑ Children may be included (review CSPA for claim if prior I-130/I-129F filed)

## Procedure (by Oct. 28, 2011)

- ❑ I-360/I-485 goes to Chicago Lockbox
- ❑ I-360 stand alone goes to Dallas or Phoenix Lockbox
- ❑ I-864 not required (only I-864W)

# New 204(l) Surviving Relatives

Aliens  
Described

Immed.  
Relatives

Family Pref

Employment  
Pref (deriv)

Refugee  
Asylees

U and T NIV

- Immediately prior to the death of the qualifying relative was beneficiary
- Resided in the U.S. at time of death
- Continues to Reside in the U.S.
  - ▣ Consider what “Residence” means
- Petition or Application for Adjustment or Related Application
  - ▣ Shall be adjudicated notwithstanding death (unless against public interest)

# New 204(l) Surviving Relatives

## Eligibility Considerations

- New Law Retroactive if still eligible/admissible
- Humanitarian Reinstatement still available
- Affidavit of Support needed (substitute)

## Admissibility Considerations

- Waivers should be accepted despite hardship requirements
- Maintenance of Status should not negatively impact application if lapse related to death

# Widow(er)s who remarried

## New 204(I) may provide relief

- ❑ Does not bar relief for those who remarried
- ❑ Includes immediate relatives
- ❑ Fixes eligibility at point prior to death

## Forthcoming guidance?

- ❑ USCIS has not issued guidance so far on 204(I)

P A R R I L L I

R E N I S O N

# DEATH HAS NEW MEANING FOR SURVIVING RELATIVES

By Brent Renison ([brent@entrylaw.com](mailto:brent@entrylaw.com))