

It's Time to Take Action: Protect Immigrants from Fraudulent Legal Practices

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Luis Cervando Enciso-Lopez, a legal Milwaukee resident, made a tragic mistake – he hired a “notario” to handle his wife Alicia’s application for legal permanent residence. What Encisco envisioned as a promising future for him and his wife in Wisconsin, ended in disaster.

In order to help his wife gain legal permanent residence, Encisco sought the services of the Monteagudos, a well known “notaries publicos” in Milwaukee who have been offering immigration services for a number of years. Encisco, a Cuban native, did not realize that a notario in the United States is not the same as a notario in Latin American countries. In Encisco’s native country, a “notario” means a “Super Lawyer,”; however, in the United States, “notarios” are not lawyers. Notarios in the U.S. can put immigrants at risk as they are unqualified to apply regulations, statutes, and immigration case law to individual matters. Without that ability, notarios can cause significant harm to individuals who seek permanent or temporary legal status – exactly the case for Encisco and his wife.

As a result of improper representation, Encisco’s wife did not gain legal permanent residence (“LPR”) and was subsequently deported. The couple first went to the notarios in 2004, but they were told to come back after three years when the wife’s application for LPR status would be timely. In 2007, they returned four times for consultations on Alicia’s immigration case and paid for application fees, processing fees and medical examinations required by U.S. immigration. However, in November 2007, Alicia was interviewed by the immigration service and subsequently deported.

Frustrated with his wife’s misrepresentation, Encisco brought a small claims court action against the Monteagudos, claiming that Alicia was deported as a result of the Monteagudo’s faulty advice and that he was entitled to recover the expenses he incurred; he claimed breach of contract, negligent misrepresentation, notary misconduct and negligent provision of services. In all, Encisco had

spent about \$3,000. In granting the Monteagudos motion for summary judgment, Milwaukee County Circuit Court Judge Thomas R. Cooper ruled that Encisco did not have standing to bring the case and that his wife was here illegally “by her own choice. Therefore, it’s an unenforceable contract.”

Unwilling to give up and on the advice of an experienced immigration lawyer, Encisco appealed and was successful. This past June of 2011, the state Court of Appeals ruled that Encisco had indeed sustained a monetary loss by paying various fees in an effort to keep his wife in the country and to keep his family together. The court said “Encisco clearly had a personal stake and interest in keeping his wife in the country and therefore was part of whatever oral agreements may have been made with the Monteagudos regarding their work to help Alicia obtain citizenship.” The Court wrote that “Encisco had standing to sue the Monteagudos for his monetary losses resulting from what he can prove was negligent advice or action.”

For Encisco, the court battle was bittersweet. He may gain back the money that he gave the Monteagudos, but he will forever wonder whether or not Alicia could have obtained permanent residence had they hired the proper legal representative in the first place.

To prevent similar situations in the future, Senator Dianne Feinstein of California recently introduced federal immigration legislation this past July which makes it a felony to falsely represent oneself as an attorney or legal authority in immigration proceedings. This law makes it a federal crime to defraud any individual in connection with any matter arising under federal immigration law.

Before the legislation, there was no criminal statute to penalize or prevent immigration fraud. According to Feinstein, “This bill would put a stop to those that prey on immigrants using the fear of deportation as bait.”

Receiving erroneous immigration advice can severely damage the lives of individuals who need help in the confusing and complex immigration process. The irresponsible handling of these cases clogs the overburdened immigration courts and keeps families and businesses waiting in limbo for years. Obtaining such advice from unqualified individuals leaves immigrants like Encisco without a family and the forever-haunting question of “What if?” “What if I had done it differently?”

For more information about notarios, please visit the ABA at www.abanet.org or AILA at www.aila.org. To file a complaint against a notario in Wisconsin, contact one of the four regional offices for the Department of Agriculture, Trade, and Consumer Protection, visit www.datcp.wi.us for more information.

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