

Gone by default

Andrew Harris, Staff reporter
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Salvatore Coraggioso may be deported any minute.

A U.S. resident since he was 4, the Italian-born New Jerseyan has a high school diploma, works and pays his taxes. He has never been arrested.

But because he was never formally admitted to the United States, he will soon "be forced to leave behind his family, friends, and the only life he can remember,"

U.S. Circuit Judge Thomas L. Ambro said in a Jan. 27 decision.

Coraggioso, 26, is not alone.

Each year the government sets aside 50,000 "diversity visas," with the statutory mandate that they be issued to natives of countries that are underrepresented in the typical U.S. immigration patterns.

Yet, almost without fail, the government ends each fiscal year with hundreds, if not thousands, of these visas unissued, even though it always has a surplus of applicants.

Like Coraggioso, many of those applicants would qualify for the green cards making them lawful resident aliens—except that the former U.S. Immigration and Naturalization Service (INS) failed to finish processing their applications before the end of the fiscal year in which it was filed.

Coraggioso's application, filed when he was 20, expired when the agency—known since March 2003 as the U.S. Citizenship and Immigration Services, part of the Department of Homeland Security—failed to process his fingerprint records before Sept. 30, 1998.

Ambro, who sits on the 3d U.S. Circuit Court of Appeals, said that he sympathized with Coraggioso's plight. But he concluded that he was without authority to offer any relief. *Coraggioso v. Ashcroft*, No. 03-1075.

Help, the judge suggested, could come from Congress in the form of a private relief bill.

Theoretically, it could come in the form of a just-introduced U.S. Senate bill aimed at eliminating the end-of-fiscal-year deadline for processing all completed applications filed in a timely fashion. Filed on Feb. 12 by Senator Saxby Chambliss, R-Ga., the bill would amend one of the program's controlling statutes and would be retroactive to 1998, meaning that it would apply to Coraggioso.

Washington lawyer Palma Yanni, president of the American Immigration Lawyers

Association (AILA) said that her organization supports the bill.

At press time, however, Chambliss was the the measure's sole sponsor.

'Scared to death'

Coraggioso declined to be interviewed for this article. His attorney, John D. Perez of Newark, N.J., said that Coraggioso's uncertain status has his father and mother "scared to death."

Perez still believes he can alter the outcome of his client's case.

A son of Spanish immigrants, Perez practices in Newark's Ironbound district, a neighborhood heavily populated by Spanish and Portuguese immigrants.

Many of his cases, he said, are pro bono. "It's a very demanding practice," Perez said, "not something you dabble in. Either you do it or you don't."

The reception area of his office space is decorated with a pair of Ellis Island lithographs painted by New York artist Mort Kunstler. One depicts the huddled masses in the island's main hall, the other is titled simply, "Freedom."

In Perez's private office, opposite his desk, is a poster depicting Muhammad Ali, whom he calls a hero of his. On Perez's desk stands a foot-high statue of justice, blindfolded. The scales dangling from her left hand are slightly askew.

On the wall alongside his desk are an array of diplomas and admission certificates. Although he is admitted to practice before the U.S. Supreme Court, he has never argued before it. Coraggioso's case, Perez said, may be his first.

At oral argument before the 3d Circuit, Perez said, he was asked by one judge if he was asking the court to "fly in the face of other circuits" that have not been willing to compel the INS to issue its entire diversity visa allotment.

His answer: "Absolutely."

Perez maintains that there is a conflict between the statutory INS deadline for processing diversity visa applications and another statute directing the agency to exhaust all of its visa slots every year. "It's a two-way street that, unfortunately, never runs in both directions," he said.

At oral argument, Perez was opposed by Assistant U.S. Attorney Michelle E. Gorden. Citing its standing policy of not commenting on pending litigation, a Justice Department spokesman declined to comment or make Gorden available for an interview.

Obtaining a diversity visa is not just like winning the lottery, it *is* a lottery.

State Department spokesman Stuart E. Patt said that nearly 6 million people applied for the class of 2005 during the 60-day application period that ended on Dec. 30, 2003.

Only 110,000 of those applicants will win diversity visa (DV) numbers and no more than 50,000 of them will get green cards.

The first qualification for getting a DV number is nationality. Applicants cannot be from a country from which more than 50,000 have emigrated to the U.S. in the past five years.

For the 2005 pool, Italians are in; mainland Chinese are out. The French are welcome. Canadians are not. Sri Lankans are eligible, but not Pakistanis. The list goes on.

Applicants must have at least a high school education or its equivalent, or at least two years' work experience within the past five years in a field requiring at least two years of training or experience to perform.

In addition to such obvious requirements as name, birth date, gender, country of birth, marital and family status, a photograph must be submitted with each application. Each photo is subject to 10 different strictures. If the photo does not meet all of those requirements, it, and the application, will be rejected.

From that pool, which includes both visitors to the U.S. seeking to adjust their status, and people outside the country seeking to emigrate, a computer will randomly select 110,000 "lottery winners" who will be assigned DV numbers, starting the clock on their time to get a green card.

Between Jan. 1, 2004, and Sept. 30, 2005, Citizenship and Immigration Services officials will winnow the field by reviewing the applications, demanding additional documents, running extensive back-ground and fingerprint checks and conducting interviews.

Random selection by the computer does not automatically guarantee that an applicant will get a visa, the State Department's DV Web page warns. "Selected applicants who wish to receive visas must be prepared to act promptly on their cases."

In short-and by law, 8 U.S.C. 1154 to be precise-applications that are not fully processed by the end of the fiscal year, will die.

"These deadlines must be met," Patt said. "Unfortunately, processing can take a while."

Perez said, "A DV lottery winner has very specific procedures which must be followed to the letter, but if you run up against the deadline . . . you're out of luck."

Sal Coraggioso was included on his parents' 1998 DV application, Perez said. Having submitted all of the paperwork requested by the INS in a timely fashion, they believed they were in line for a visa, only to learn in January 1999 that they had been rejected.

Because the parents have an American-born daughter, they have a defense to deportation. No longer a minor, Sal Coraggioso has no such defense.

In his decision, Ambro wrote, "Application of the statutory language exacts an extreme hardship on Coraggioso and his family. But in the absence of a patent absurdity, we must interpret the statute according to its plain meaning."

Based on the tone of Ambro's opinion, Perez also said that he believes that the case is one the Supreme Court may be willing to hear. To that end, his most immediate task is obtaining a stay of deportation for his client.

"It's time to make the service accountable here," Perez said.

AILA's Yanni called the DV program frustrating. Of one tenuous case, she said, "We made it, but it was scary."

Describing one of her own unsuccessful cases, Margaret A. Catillaz of Rochester, N.Y.'s Harter, Secrest & Emery used the word "heartbreaking."

Both said that the statutory processing deadline must be changed.

A former AILA president, Catillaz argues that a DV number holder among the first 55,000 to submit a complete application on time should have his or her status frozen as of that date.

When Chambliss introduced his bill, he cited the case of Charles and Doin Nyaga, two Kenyan nationals living in Atlanta whose complete and timely application, like Coraggioso's, had timed out.

Like the Coraggiosos, the Nyagas had gone to court without success.

Deadline tactic

The Nyagas' attorney, James V. Noonan of Chicago's Noonan & Lieberman, believes, however, that he has found a means of getting around the fiscal year deadline, at least locally.

If the end of the fiscal year is near and a green card has not yet been granted to his otherwise eligible client, Noonan said, he has resorted to petitioning for writs of mandamus at the U.S. district court in Chicago.

His first success was in the unreported case *Marcetic v. INS*, No. 97 C 7018 (N.D. Ill.). He prevailed again in *Paunescu v. INS*, 76 F. Supp. 896 (1999). As a result of his success, he said, the INS tends to move his clients to the top of the list.

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