

residency — but not necessarily be admitted.

Mr. Martinez meets all three criteria.

The rule was added to the Immigration and Nationality Act during the mid 1990s, under section 212(a)(9)(C).

“Ah, the old, dreaded 212(a)(9)(C),” joked a newspaper editor who hadn’t heard of the law. The numbers sounded absurd spoken out loud, like some crazy code for sad stories of separated fathers, mothers and children.

“One of the more tragic cases that an immigration lawyer can have starts with a call from a United States citizen spouse regarding news of the denial under INA 212 (a)(9)(C) of an immigrant visa to his or her spouse at a U.S. consular post abroad,” wrote Kathleen Walker, president of the American Immigration Lawyers Association. “Many times in these cases, the spouse has never been advised of the existence of the 212 (a)(9)(C).”

Such was the case with Mrs. Martinez.

“I was already thinking this was probably a 212(a)(9)(c),” said immigration attorney Mr. Seipp in Tampa, as if he had been dreading it, before learning that Mr. Martinez had been deported. His tone seemed to imply a gentle shake of the head, a shrug of the shoulders. “That’s a very, very common situation down here and it’s a killer,” added Mr. Seipp. “They call it the permanent bar.”

Although the permanent bar applies to Mr. Martinez’s situation precisely, government agencies would not confirm that it led to his being barred from the U.S., because of privacy rules.

The U.S. Consulate in Juarez “isn’t obliged to speak to reporters,” said attorney Mr. Perez. “So they don’t.”

Last summer, Mrs. Martinez called the U.S. Consulate to confirm her husband’s 10-year ban from re-entering the U.S. They did, but wouldn’t answer any other questions, and have remained incommunicado since then.

“I have yet to get any communication from the Consulate,” said Mr. Perez. “The same with Deborah. She hasn’t gotten anything.”

Although it is, in fact, officials from the U.S. State Department who review cases like Mr. Martinez’s at the Consulate, a spokeswoman for the U.S. State Department asked not to be quoted in this article because, she said, “We don’t make the decision to deny them residency.”

The State Department officials at the Consulate are simply messengers, the spokesperson said, objective recorders of indisputable facts and events. As such objective functions, they hold no more responsibility than a tape recorder.

“We listen to this story and pass it on to the ICE or DHS,” she said.

But the State Department spokesperson understood the Martinez’s basic situation. After hearing that Mr. Martinez had re-entered the U.S. illegally after being deported, then tried to get residency at the consular office in Juarez last summer, she remarked,

“I have a funny feeling they looked at him and said, ‘You’ve gotta be kidding me.’”

This reaction to what “they,” the State Department officials at the U.S. Consulate, might have viewed as an absurdly hopeless situation was predictable, according to immigration lawyers.

“If you key in on the law, it’s crystal clear what it’s saying,” said Tampa attorney Mr. Seipp.

“(The 212(a)(9)(c)) is not anything complicated,” said Yraida Alonso, immigration director for Catholic Charities, the diocese of Venice. “Everyone who works with immigration knows it.”

The Martinez’s attorney summed it up: “The bottom line is, he’s inadmissible. I just don’t see a lot of options for him.”

Deportation or not, attorney Mr. Perez expected the consulate to deny Mr. Martinez his residency at the first try. But he planned to circumvent the denial by filing a “hardship waiver,” and predicted that the Consulate would allow Mr. Martinez to return to his family in less than one year.

Even if they eventually do allow Mr. Perez to file a waiver, he will have to prove that the hardship for Deborah Martinez is “exceptional and extremely unusual,” which is generally interpreted to mean she is suffering from some debilitating health condition.

And, Mr. Perez noted, the situation for the Martinez children, Alex and Isabel, is not a major consideration to officials from USCIS when they review a hardship waiver.

“The child’s suffering, in and of itself, is not enough,” Mr. Perez said. “They want to know how the spouse is affected. The issue of the hardship (waiver) is a big frustration in my profession. Basically, (Ms. Martinez) has to be almost dying. Federal circuit courts watered it down because they said that’s just too harsh. You can see there’s almost a malicious intent of the Congress back in the mid-1990s when they enacted that legislation.”

Federal courts have not watered the law down enough, however, to include single parents, even if they are struggling financially.

Attorney Mr. Seipp said the law is intended to be harsh, so that it would be a “heavy-duty deterrent” to people like Mr. Martinez who might try enter the country illegally. But young Mexicans who are determined to find a better life in the United States — even if it means a risky walk across the border — are generally in the dark when it comes to the dreaded 212(a)(9)(C).

“It doesn’t really deter too many people,” Mr. Seipp said.

Mr. Seipp is hopeful that President-elect Barack Obama’s administration will pass immigration reform. And who knows? Maybe it could help Mr. Martinez.

“He needs a new law,” Mr. Seipp said.

Meanwhile, Ms. Martinez said, she still has hope although she is considering moving to Mexico.

“I can’t keep my children separated from their father,” she said. ■

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