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Ask A Immigration Lawyer

Caught in the crossfire

Immigration issues can make college a complicated proposition

by Sandra Svoboda
1/30/2008

"If a foreigner who is illegally in the United States breaks their leg and seeks medical care, should the hospital treat them?"

Olga Gonzalez says she clearly remembers the debate that question generated in a social studies class during her junior year at University Liggett School. She listened in horror as one of her classmates gave his opinion.

"Let them die," he said. "They don't deserve to be here."

Wary of making the issue too personal because of the problems she could face, Gonzalez, who is Mexican, spoke up anyway. She had family who could be in that situation, she told the other students at the exclusive Grosse Pointe Woods school she attended on scholarship. Would they want them to die?

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She didn't change anyone's opinion.

"What if you were in Europe skiing and you broke your leg and the hospital wouldn't treat you because you weren't European?" she asked the class.

That made the class at least pause. They could see the humanity missing from their opinions. Gonzalez breathed more easily.

As an undocumented immigrant, Olga Gonzalez hid her status in high school.

Aziz Alfassa isn't sure what will happen to his residency petition.

But a few months later, she couldn't help but confess how personal the issue was when a school guidance counselor pressed her to answer a question on her college applications: Are you a U.S. citizen?

She wasn't. In fact, she was in this country illegally.

Her mother, who married an American man, brought Gonzalez here from Mexico when she was 5 years old. She attended school in Detroit before she and her family — four American-born siblings and her mother, a health educator, and her stepfather, a factory worker — moved to Lincoln Park.

Her mother eventually gained permanent residency but Gonzalez says her paperwork was lost. She says it was filed in a pre-9/11 world, but in the anti-immigration fervor following the terrorist attacks, her family didn't want to draw any attention to her situation and so didn't follow up on the missing application.

She had kept her secret since she first understood in junior high that telling anyone could mean deportation to Mexico, a country she barely remembers.

But that day in the counselor's office, with good grades, adequate test scores and a dream of a career as an attorney, she had to face her situation with a college application in front of her.

Her counselor suggested she leave the citizenship answer blank. It worked. She was accepted by Wayne State and Michigan State universities.

But then Gonzalez discovered she'd need to pay out-of-state tuition rates because she couldn't document her Michigan residency as the schools required. She couldn't

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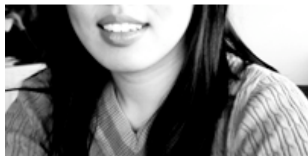
Caroline Vang has known no other home but Michigan. But how long can she remain?

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get loans because of her undocumented status.

The question of how to pay for school became more pressing than her legal status. Without more education, what future did she have?

Documenting the Undocumented

Her situation is hardly unique. According to estimates from the U.S. Department of Homeland Security, about 11.6 million immigrants lived in the United States illegally in 2006, up from an estimated 8.5 million in 2000. An Urban Institute report in 2004 estimated Michigan's undocumented population at between 120,000 and 150,000. They are people who either entered illegally or remained here when their temporary permits expired.

Among them nationally, the Pew Hispanic Center estimates, are about 1.8 million children 18 or younger.

Because of a 1982 U.S. Supreme Court ruling, public schools — kindergarten through high school — must educate undocumented children; an estimated 65,000 of them now graduate from U.S. high schools each year.

But what happens then?

They can't legally work. In cases like Gonzalez's, they can't document residency for more affordable in-state tuition rates. They can't get student loans. College can become an insurmountable hurdle.

"These are motivated, deserving students who just hit a brick wall after high school," says Kathy Orscheln, the interim director of admissions at Eastern Michigan University.

Political squabbles about this and many other immigration policies are familiar headlines. Congress and the White House have debated whether long-term illegal immigrants should be granted amnesty and citizenship. Republican presidential candidates have discussed the feasibility of completing a fence along the U.S.-Mexican border. Presidential candidates Hillary Clinton, John Edwards, John McCain and Barack Obama co-sponsored various U.S. Senate bills that would have granted citizenship to some young adults who were brought to the United States illegally as children or young teens if they completed two years of college or military service. They differ on whether illegal immigrants should be able to obtain driver's licenses: Obama supports issuing them; Clinton, Edwards and the Republican candidates don't.

Michigan's law — as recently clarified by the state attorney general — allows only permanent, legal residents to obtain driver's licenses. Legislation is pending that would expand that to legal temporary residents.

Clearly immigration is an explosive political issue with voters naming it in some polls as the third most important factor in their votes behind the economy and the Iraq war.

And caught in the immigration policy crossfire are three Michigan college students including Gonzalez who spoke candidly with *Metro Times* about their lives as immigrants — at times illegal or at least legally clouded.

If politicians are the generals directing this country's civil war over immigration policy, these young adults and thousands like them are the civilians who can become the collateral damage.

Their stories illustrate some of the realities for children who immigrate here, sometimes illegally, through no action of their own. Their cases can be legally complex, lengthy and costly. And they demonstrate the complicated realities behind the sound-bite rhetoric.

State Rep. Steve Tobocman, a Democrat representing southwest Detroit, has sought reforms for immigrants including in-state tuition at Michigan universities.

"You're punishing them for the sins of their parents," he says. "If parents are smuggling drugs, we don't put children in jail for that."

All three of these young adults have fought to stay in southeast Michigan. All three have worked and paid taxes. All three have graduated from high school and now attend college. Two have followed family to Detroit, the third has left a father and extended family members behind. All three are motivated and ready to do the work needed to build their young lives, eagerly embracing the ideals of America.

And they wonder, if America doesn't want them, who does it want?

"There are so many innocent children who get lost in the immigration system. ... Not everyone that's here in undocumented status — especially children — is here because they decided to commit a crime," says Alicia Villareal, executive director and chief executive officer of Latino Family Services in southwest Detroit. "It's so important for people to realize and see what immigration law and the system are really doing."

Like Gonzalez, the stories of Aziz Alfassa and Caroline Vang cast light on young adults caught in the confusion of immigration policy.

Fleeing Violence

One of the college-age guys who lives in this fenced, two-story house mops the floor after a "small party" the night before, and another tweaks the screws on the front door screen. With a visitor inside, they hitch up their baggy pants and lock away a small dog that "doesn't like people."

Their roommate, 20-year-old Aziz Alfassa, emerges from a back room. He isn't quite ready for a meeting. He apologizes in his lightly accented English, politely using "please" and "ma'am." That's just how he was raised, he says later. He's been studying, determined to raise his 2.9 grade-point average at Henry Ford Community College in Dearborn. He apologizes in advance for his English that he considers limited. He's fluent.

His roommates in this home near Michigan and Livernois avenues in Detroit aren't going to college — they just aren't into it, Alfassa says. He used to tell them they should be — what kind of future do they face without an education? But now he's given up preaching. He has his own battle to fight, and it involves a lot more than finding the motivation to get to campus. He's wondering how long he can legally stay in Michigan.

Alfassa is from Togo. In the nearly six years he's been in Michigan, he hasn't met anyone else from Togo and rarely meets an American who knows anything about his homeland.

"You would love it there," he says. "The dance, the culture. That's what I miss ... but I like the opportunity and the choices of America better."

The smallest country in Africa, the former French colony is just a 100-mile-wide sliver jutting inland and northward from the continent's west coast. When President Gnassingbe Eyadema died in 2005, after nearly four decades in office, the military swore in his son, Faure, in a move that was condemned by other African leaders. He stepped down, but then just weeks later won an election accompanied by violence and suspicion of vote tampering. Tens of thousands of Togolese fled to neighboring Benin and Ghana.

A 2002 Amnesty International statement criticized Togo for human rights violations including "violence against members of political parties."

Alfassa says that last he heard, nearly two years ago, his father was among the Togolese refugees in Ghana. A leader for several years in the Union des Forces du Changements, the opposition movement to the Eyadema governments, and an adviser to the party's executive cabinet, Alfassa's father had been in hiding since 2001.

The Togolese government's suspicion of the father had spread to his eldest son by 2002, he says. Police questioned then 14-year-old Alfassa. He says they beat and detained him and questioned him about his father's whereabouts.

After the second time that happened, an uncle sent Alfassa to Michigan with a Ugandan woman whose son-in-law lived in Grand Rapids.

"He said it was dangerous for me and for his family for me to stay there," Alfassa says. Alfassa arrived in Grand Rapids without knowing anyone or speaking English. He stayed with a family there for six months, learning English and doing work on the house. When his visa expired, he came to Detroit's Freedom House, which provides shelter and legal assistance for people seeking political asylum.

Wayne County Juvenile Court became Alfassa's guardian in 2004 because his birth mother was dead and his father was in a refugee camp, says Freedom House's then-legal director David Koelsch. In the order that Wayne County Circuit Court Judge Leslie Kim Smith issued after Alfassa's child protective proceeding, she wrote "it would not be in this child's best interest to return to his home country."

Alfassa lived with a foster family in Detroit and attended Holy Redeemer High School. He played football, made friends, enjoyed school and graduated, selling the artwork he'd done for a class to pay for his class ring.

His grades were good enough to qualify for a state scholarship. "But I can't apply because I'm not a citizen," he says.

To be a legal, permanent resident here, Alfassa needed to jump through more legal hoops. Koelsch, who had become the director of the immigration law clinic at the University of Detroit School of Law, filed Alfassa's application for Special Immigrant Juvenile Status for the then-teenager in January 2006.

"It's the lucky few who even make it this far," Koelsch says.

Congress created the special status for juveniles in the immigration reforms of 1990. If children are wards of a court because they have been abused, orphaned or abandoned, they can file for the status, which gives them permanent residency.

According to the federal Office of Immigration Statistics, the number of residencies granted to such applicants is growing. In 2004, 634 were granted permanent residency nationally. That grew to 679 in 2005 and 912 in 2006.

There is no time requirement on when decisions are made to grant or deny special immigrant juvenile status. But if it's not granted by the applicant's 21st birthday, the request expires.

"Congress set up the system. The kids qualify for it, and you're in a situation where, if the bureaucracy doesn't do what it's supposed to do, it's failing these kids," Koelsch says.

For Alfassa, that means his juvenile status application will expire in December. He'll have no legal basis to be in the United States. If he can't stay here, he'll have to leave behind family members in Grand Rapids who came to Michigan after him, including two younger half brothers who are in foster care with their own complicated situations.

"I don't want to separate from them and just leave," he says.

Until then, he'll continue taking whatever classes he can afford at Henry Ford Community College. He plans to be a nursing assistant, working at that job while finishing a bachelor's degree. He wants to be a doctor and feels a responsibility to become one.

"I'm a man now. I'm not a 16-year-old kid. I've got to survive," he says. "I just don't know where I'm going [after December]. I'm doing what I've got to do. I'm going to school. Is that all there is? Can I learn more things? Can I work harder?"

Special Bill in Congress

Caroline Vang has always been here legally, but she's not sure how long she'll be able to stay.

Trying not to think about the possibility of part of her family's deportation, the 23-year-old Vang is busy. She works as youth program coordinator at Michigan State University's Extension Center in Pontiac teaching mentors in high school to work with younger children. She volunteers on projects in the Hmong community.

She is two semesters away from graduating with a business marketing degree at Walsh College in Troy after earning an associate's degree in business from Macomb Community College. She dreams of being a wedding photographer — she says she'll do that on the side — but says she needs to learn business administration to help her parents run their business — the popular Bangkok 96 restaurant in Dearborn, where she works part time.

"My passion is photography but we have to think about the family business," she says.

Vang and one of her three siblings were born in France. Her parents, ethnic Hmong from southeast Asia, met there after they fled the aftermath of the Vietnam War. Many Hmong had sided and even worked with the U.S. military during the conflict and suffered reprisals after the American troops left.

In 1989 when Caroline was 5, the Vangs came to the United States with visas they got in France. They applied for asylum and received work permits while their case was supposed to progress. Caroline and her three siblings — two were born in the United States and are citizens — went to public schools in Warren, and the family opened the restaurant. They now employ 16 people.

But the Immigration and Naturalization Service lost their files for a decade and didn't hold an interview for the family, which should have been the next step in the residency process. (See "Out of Options," *Metro Times,* Oct. 9, 2002)

In 2000, the federal government notified the Vang parents, Caroline and her French-born sister that the INS was beginning removal proceedings for the family.

Meanwhile, Caroline and her siblings haven't known any other country. And she and her French-born sister have few other options. With her family intact, Special Immigrant Juvenile Status was never an option for her as it was for Alfassa. U.S. Sen. Carl Levin has introduced a special bill in Congress that would grant the family permanent residency but, like dozens of similar bills, it's stuck in committee without hearings scheduled. Their appeal of the deportation is progressing through the federal courts.

Even as a legal U.S. resident, Vang has faced issues related to her education that are common to other immigrant students — legal or undocumented.

When she first attended Macomb Community College, she paid international rates — nearly double the in-state rate. Vang says she didn't care what she paid, she was just happy to be attending college.

"I didn't really question it. I just knew I was very fortunate to get in," she says. "I just do my best and work hard and take advantage of what I have."

Vang managed to pay the tuition. But for students like Gonzalez, the higher tuition rate can be the difference between higher education and no education.

States have begun to address this issue, but they still must comply with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. That federal law prohibits offering illegal immigrants benefits not available to legal residents.

Ten states — California, Texas, Utah, New York, Oklahoma, Washington, Kansas, Illinois, New Mexico and Nebraska — have enacted laws that manage to conform to the federal mandate yet offer undocumented students tuition relief. If students — undocumented or legal — have completed a certain number of years of high school or obtain a GED in the state, they pay in-state tuition, these laws say.

A similar initiative in Arkansas was the subject of the first attack ad in the Republican presidential campaign. In a television commercial that aired in Iowa before the caucus there, Mitt Romney criticized Mike Huckabee for supporting in-state tuition rates for undocumented students when he was governor of Arkansas. Romney had vetoed such a plan in Massachusetts when he was its governor.

Michigan has no such statewide provision.

"How nice it would be to have it," says Jorge Chinea, the director of the Center for Chicano-Boricua Studies at Wayne State University. "It means added enrollment."

Chinea sees undocumented students who are admitted to the Detroit university but are unable to attend because they're ineligible for state or federal financial aid. "From the university's standpoint, you can open the door. For the students who are going to walk through the door, they need to know how they can afford it," he says.

But even if the political will in Lansing were to favor a proposal to offer more students in-state tuition, legislators can't enact one. The Michigan Constitution grants public universities the right to govern themselves on matters including setting residency policy and tuition rates.

Tobocman introduced a measure anyway five years ago, in part to raise awareness of what he considers a contradiction: If an estimated $165,000 is spent to educate a child from kindergarten through high school in Michigan, why exclude them from higher education where they assume a share of the cost, become much higher wage-earners and eventually pay more taxes?

"We have created a disincentive to go to college," Tobocman says. "It's ludicrous saying we don't want people to be college-educated."

Eastern Michigan University asks for applicants' citizenship but doesn't follow up if it's left blank, says Orscheln. "If they have attended Michigan schools, a Michigan high school for two years or more, then we will allow them to attend and pay in-state tuition," she says. "We don't consider students who are undocumented as international students. We just don't. They're not."

About three years ago, Orscheln says, the Ypsilanti school decided to revise its residency policy to reduce costs for these students.

"This is a real challenge for all of us at public universities," she says. "If they can't work, where should they be? They should be in school preparing for the time the Dream Act passes."

The American DREAM

Vang, Gonzalez and Alfassa had hope in that congressional measure, the Dream Act, at least until last fall.

The Development, Relief and Education for Alien Minors (DREAM) Act would have allowed certain students to apply for conditional status for up to six years of legal residence. During that time, the students would be required to graduate from a two-year college, complete at least two years of classes toward a four-year degree or serve in the U.S. military for at least two years. At the end of six years, students would be given permanent residency if they met the conditions. To qualify, students would have to have come to the United States when they were 15 or younger and would have to have been here at least five years before applying.

Introduced in some form every session since 2001, the most recent version died last fall. In October, the Senate voted whether to permit debate about the Dream Act and move it toward a full vote. Sixty votes were needed for it to continue along, but only 52 senators voted to do so. Michigan Sens. Levin and Debbie Stabenow were among them.

The National Immigration Law Center blamed the Dream Act's failure, in part, on a

White House statement against the measure that was released the day of the congressional vote. "The administration is sympathetic to the position of young people who were brought here illegally as children and have come to know the United States as home," the statement read. "Any resolution of their status, however, must be careful not to provide incentives for recurrence of the illegal conduct that has brought the nation to this point."

The White House called the Dream Act a "preferential path to citizenship for a special class of illegal aliens." Other detractors cited a fear of document fraud and the open-ended nature of the legislation.

Alfassa says those who would qualify should be given the chance to prove themselves.

"I don't understand the way it works," he says. "If somebody wants to do something, let's give them a chance. If they make a mistake, they can't complain anymore."

Detour for Gonzalez

While Gonzalez, Alfassa and Vang have waited for action or policy changes relative to their cases during the last few years, an increasing number of immigrants are being granted permanent resident status in the United States: Up from nearly 798,000 in 1997 to 1.3 million in 2006.

In Michigan, about 15,000 people obtained permanent resident status in 1997 and nearly 21,000 did in 2006, according to Homeland Security data.

Whatever the 2007 number, Gonzalez will be among them.

After her first semester at Michigan State University in 2004, Gonzalez said the private bank that had given her stepfather a loan for her education pulled it when they discovered her undocumented status.

Unable to afford out-of-state rates, Gonzalez came home and enrolled at Wayne County Community College. Last year, a friend who knew of her situation referred her to an immigration attorney who straightened out her case.

"She said it was stupid to have waited as long as we did," Gonzalez says.

Within months, she was granted permanent residency. She qualified for a work permit and works full-time with children at Latino Family Services coordinating their recreational activities after school. She's taking four paralegal classes during the evening at Wayne County Community College.

Her family has moved to Arizona — bad economy in Michigan, Gonzalez says — but she rents a room from a friend's mother. She plans to be back at Michigan State a year from now — her new legal status makes her eligible for loans. She plans a pre-law major.

She wants to be an immigration attorney.

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