

IMMIGRATION LAW KING FALL 2009

PART 1: LONG ESSAY [150 Points]

Recommended Time: 2 hours, 15 minutes

FACTS:

Maria and Selvin are mother and son. Both were born in Belize. Selvin's father, Frank, to whom Maria has never been married, was a United States Citizen (USC). In August 1999, at age 11, Selvin legally immigrated to the U.S. as the immediate relative of Frank. Maria's father is a Lawful Permanent Resident of the U.S. (LPR), who filed a family second preference petition for Maria in April 1999. Although the petition was approved, the priority date was far from current and, at the time Selvin immigrated, Maria had no legal way to immigrate to the U.S. Distraught over the loss of her only son, Maria followed Selvin to the U.S., traveling by bus and foot and eventually entered the U.S. illegally through the help of a "coyote" on September 15, 1999.

After Maria arrived in the U.S., she shared custody of Selvin with Frank for a few years until Frank died. While in the U.S., she gave birth to Dixie, the result of a one night stand. Until she lost her job in 2006, Maria worked (without authorization) in a massage parlor and supported Selvin and Dixie. Dixie was born with a severe cleft palate and needed several surgeries before the age of six. Although the surgeries helped so that Dixie could eat properly, the doctors told Maria that they'd done as much as they could until Dixie turns 16. At that time, she will need another surgery. Without this surgery, according to the doctors, Dixie will suffer lifelong pain and have an unsightly appearance. Dixie's surgeries were covered by Maria's health insurance, which she acquired through her employment. When Maria resumed her job in January 2006, her health insurance was restored and continued to cover Dixie, despite Dixie's pre-existing condition. Maria had to provide a copy of her birth certificate and those of her two children in registering for the health insurance.

At age 16, Selvin began hanging out with "the wrong crowd" at school. In May 2004, he picked up a juvenile adjudication of delinquency for driving the "getaway car" when his friends robbed a convenience store. He spent almost two years in juvenile hall for this crime. After his release, he never saw these friends again. Nevertheless, in June 2006, at age 18, he got caught stealing some bread and cheese from Safeway to take to his mother, who had lost her job and had not eaten or fed Dixie for a few days. After several preliminary hearings, he pleaded guilty on 9/3/06 to two counts (one for the bread, one for the cheese) of petty theft and was sentenced to 6 days in county jail and probation. After his release, he went to live with his mother and sister.

After this, Selvin got a job and supported Maria and Dixie until his mother's job resumed in January 2007. He went back to school and got his G.E.D. and started community college. But in September, 2009, he was charged with possession of a controlled substance under a California law which punishes possession of a very broad range of

controlled substances, some of which are not controlled under the Federal Controlled Substances Act. Although Selvin was unaware there was cocaine in the pocket of a jacket he borrowed from a friend, he pleaded guilty to the charge on the advice of an attorney. He was sentenced to two weeks in county jail and released into the custody of Immigration and Customs Enforcement (ICE) on 9/28/09. The same day, a Notice to Appear in Removal Proceedings (NTA) was issued for Selvin. When ICE agents issued the NTA to Selvin, they investigated and found out his mother was here illegally, so they issued a NTA to her as well.

September 2009 was a bad month for Selvin. After he was released on bond from ICE custody, he was diagnosed with a rare form of Leukemia and started an aggressive treatment program requiring daily medication. Doctors told him that if the medication is taken conscientiously, the disease, though incurable, can be kept at bay for a long and productive life.

It is now December 5, 2009. Selvin continues working, but his job does not provide medical insurance. Maria has taken a second job, so that she can pay for his medical bills and medication. Because he is over 18 and has a pre-existing condition, she can't add him to her medical insurance policy. Selvin and Maria come to see you for advice and representation in their removal proceedings.

QUESTIONS:

Please answer the following questions about Maria and Selvin in an essay about their legal situations. Assume that they come to ask your advice in December 2009. Please divide your answer into two distinct sections and be sure to address the questions related to Maria and Selvin each in a separate section:

Selvin [90 Points]:

1. Is Selvin removable? If so, under what ground(s) and why? Who has the burden of proof? In your opinion, will ICE be able to sustain those charges? Why or why not?
2. If ICE is able to sustain the charge(s), does Selvin qualify for any relief from removal? What application(s) might he make? What must he show to qualify for each such form of relief? What are his chances of prevailing and why? What impediments might there be?
3. What types of evidence will you tell Selvin to gather to begin preparing his case?

Maria [60 Points]:

1. Is Maria removable? If so, under what grounds and why? Who has the burden of proof?
2. If ICE is able to sustain the charge(s), does Maria qualify for any relief from removal? What applications might she make? What must she show to qualify for each form of relief? What are her chances of prevailing and why? What impediments might there be?
3. What types of evidence will you tell Maria to gather to begin preparing her case?
4. Is there any way that Selvin can help Maria stay in the U.S.?