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Immigration Law Forces Encalada Family's Painful Separation

By Nina Bernstein

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Elizabeth Drummond was a single mother from a hardscrabble family whose roots go back to the Mayflower and an American Indian tribe. The man she married, Segundo Encalada, was a relative newcomer to the United States, sent illegally by his parents from Ecuador when he was 17.

He soon became "Daddy Segundo" to her little boy, coached her through the Caesarean births of two daughters, and worked construction and landscaping jobs here on Long Island to support them all.

In an earlier era of America's immigration history, they could have stayed together, and Mr. Encalada might still be alive. But in July 2006, when Mrs. Encalada was pregnant with their third daughter and immigration crackdowns were sweeping the country, her husband was ordered by immigration authorities to take "voluntary departure" back to Ecuador.

They thought of hiding, she says, but chose to follow the rules, accepting the wrenching separation that has become the only path to a legal family life for hundreds of thousands of such couples. Under laws affecting those who married after April 2001, foreign spouses who entered without a visa must leave and seek one from a United States Consulate in their native land.

Their lawyer said that would take two months to a year. Instead, one year turned into three; Mrs. Encalada lost their apartment, and her son was hospitalized for depression at age 8. In July, after she flew to Ecuador for a joint interview at the United States Consulate in Guayaquil, officials there rejected the couple's application with a form letter saying they had "a marriage of convenience."

Mrs. Encalada, 32, wrote the White House, the State Department and Congressional offices to plead for help. When most did not respond, she found a new lawyer and started over. But her husband, 28, apparently lost hope. On Dec. 15, facing another Christmas far from his family, he drank poison.

Over the years, many couples who had to separate have managed to reunite; others split up for good. Some lawmakers see the hurdle as necessary to deter illegal immigration and marriage fraud, while others say it needlessly tears families apart.

But no one really keeps track of the results. The visa ordeal that left Mrs. Encalada a widow with four young children hints at a hidden toll.

Public attention has focused on the visa a United States Consulate in Nigeria granted to the man accused in the Christmas bombing attempt. But under tougher immigration laws enacted in 1996, the system also gives distant consulates vast power to delay or deny visas to would-be immigrants trying to return to their American families.

“The State Department should be ashamed of itself in this case,” said Representative Steve Israel, a Long Island Democrat whose staff found American consular officials unresponsive to several e-mail messages sent on Mrs. Encalada’s behalf from August to November. “Immigration policy in the United States is dysfunctional no matter which side of the issue, or the border, you stand on.”

Adriana Gallegos, a spokeswoman for the State Department, would not comment on the case. “It’s against the law to talk about visa records,” she said. “We can’t explain why it was denied or what was the process.” She added that her own efforts to learn more from consular officials in Guyaquil had been unsuccessful.

Aspects of the case are mystifying. Although Mrs. Encalada said she showed the consular interviewer copious evidence of her Feb. 3, 2005, marriage, including family photo albums and apartment leases, the consulate later informed Mr. Israel’s office that it had no record of her being there.

Mrs. Encalada protested that assertion in an urgent e-mail message to the consulate on Oct. 22: “How can there be no proof at all that we were there for our interview on July 20th 2009 with an interview time of 2:00? Please let me know what our next step is in this process, I need my husband home and my children need their father back!!!”

There was no reply until Christmas Eve, the week after Mr. Encalada’s suicide, when the consulate suddenly apologized for the delay and professed great concern about her case. Its e-mail message asked for her airline boarding pass, a description of the person who interviewed her and other information.

Mrs. Encalada has not replied. “Now he’s gone, it doesn’t matter anymore,” she said.

She still seemed stunned on a recent afternoon, surrounded by clamoring children in a battered house they share with her divorced father, a 58-year-old Marine Corps veteran recently laid off from his construction job, and her sister, a receptionist with two children.

Mrs. Encalada and her parents said the family’s troubles started with a gathering at her mother’s house one Friday night in July 2004, when a drunken guest meddled in a family dispute, then summoned the police, claiming Mr. Encalada had threatened her. Mr. Encalada eventually pleaded guilty to harassment in the case, a misdemeanor, and served 30 days in jail in 2006.

Legally, the offense was too minor to affect the couple's pending petition for his green card, but in practice it resulted in his transfer to immigration custody. Released on \$7,500 bond, he agreed to leave for Ecuador and seek a visa.

As Mrs. Encalada sifted through photos of their vanished life and their week's reunion in Ecuador, her children crowded around. Selena, 5, back from kindergarten, waved a picture she had found.

"Daddy's holding me; he's changing me when I was a baby," she crowed.

Hailey, 4, grabbed another photo and ripped it. Alanna, 3, born five months after her father left, was tired of being told she was not the baby photographed in his arms. "I want to be there, too!" she cried, throwing herself on the floor.

Only Griffin, 9, was silent, lying face down on a couch.

"He did take it very hard," Mrs. Encalada said later, recalling how the boy cried himself to sleep in his stepfather's arms the night before they parted, then began to misbehave at school or refused to go.

She had no car, she said, and as Griffin's absences mounted, she took him on foot, an hour's walk. Twice the school called Child Protective Services to investigate possible neglect, and twice the caseworker determined the allegation was unfounded, she said, only to have the school make a new referral.

"It got to the point I had to put him in a mental institution or C.P.S. would take him away," she said.

Griffin, a third grader, spent a week on a psychiatric ward with a diagnosis of "mood disorder," and given Risperdal, an antipsychotic drug. He returned to a home where he and his mother sleep on recliners in the living room and the girls share two couches.

"The C.P.S. worker said they need beds," Mrs. Encalada said, after patiently doling out noodle soup. "I have no money to buy beds."

Thousands of dollars went to legal expenses and filing fees, much of it borrowed, she said. Mrs. Encalada, who formerly worked as a cashier and for an insurance company, was warned by lawyers not to apply for public aid because it would jeopardize the immigration case.

"Thank God for my dad," she said. "If it were not for him, I wouldn't have a roof over my head for me and the children."

Recent research on children separated from parents through immigration enforcement has found that psychological distress and family hardship are typical. A bill sponsored by Representative José E. Serrano, a New York Democrat, would give immigration judges

discretion to take family situations into account in deportation proceedings — leeway largely eliminated by the tougher laws of 1996.

But opponents see such measures as a back door to amnesty and a reward to illegal immigrants for having children.

Such policy conflicts mean little to Mr. Encalada's in-laws, who reproach him only for ending his life. "He was a wonderful father and a wonderful husband, a very hard worker," said Mrs. Encalada's mother, Liz Volz. "If he was here right now, I would yell and scream at him. But I have a lot of sympathy for what he was going through."

Only after the consulate denied the validity of their marriage, when Mrs. Encalada consulted a new lawyer, did the couple learn about a separate hurdle. The law imposes a 10-year ban on re-entry for having stayed a year or more in the United States without permission; it can be waived only through a show of extreme hardship.

The second lawyer had started that process when Mr. Encalada gave up.