

New York Times

May 7, 2010

## Illegal Status of Army Spouses Often Leads to Snags

By JULIA PRESTON

Lt. Kenneth Tenebro enlisted in the armed forces after the Sept. 11 terrorist attacks, signing up even before he became an American citizen.

He served one tour of duty in Iraq, dodging roadside bombs, and he would like to do another. But throughout that first mission, he harbored a fear he did not share with anyone in the military. Lieutenant Tenebro worried that his wife, Wilma, back home in New York with their infant daughter, would be deported.

Wilma, who like her husband was born in the Philippines, is an illegal immigrant.

“That was our fear all the time,” Lieutenant Tenebro said. When he called home, “She often cried about it,” he said. “Like, hey, what’s going to happen? Where will I leave our daughter?”

Immigration lawyers and Department of Homeland Security officials say that many thousands of people in the military have spouses or close relatives who are illegal immigrants. Many of those service members have fought to gain legal status for their family members — only to hit a legal dead end created in 1996, when Congress last made major revisions to the immigration laws.

Today the issue is not only personal. “It is an issue of readiness for the American armed forces,” says Representative Zoe Lofgren, the Democrat from California who leads the House subcommittee on immigration. “We have many Americans who are afraid to deploy.”

Lieutenant Tenebro would like to make a career in the military, including new missions to Iraq or Afghanistan, but for now he is not stepping forward for an overseas deployment. “Our situation has kept me at bay because of the constant worry that something might happen to my family while I am away,” he said.

With the debate over illegal immigration sharpening after a tough law passed in Arizona, immigration lawyers said the Tenebros’ case illustrates legal obstacles that have stopped immigrants from becoming legal even when they could qualify.

“We have made it impossible for many illegal immigrants to become legal,” said Charles Kuck, an immigration lawyer in Atlanta who was 2009 president of the American Immigration Lawyers Association, the national bar.

Many lawmakers say that existing penalties have helped curb illegal immigration and, if anything, should be increased.

Like Lieutenant Tenebro, many soldiers, anticipating rebuke and possibly damage to their careers, do not reveal to others in the military their family ties to immigrants here illegally.

“You will always hear the jokes about those who crossed the border,” Lieutenant Tenebro said. “Even though we think we did everything legally possible, it’s just not knowing what other people will think. Maybe they will find ways to hit you, without knowing the whole facts.”

Lieutenant Tenebro, 35, an Army officer now stationed at Fort Dix, N.J., said he decided to tell his story publicly for the first time after lawyers advised Mrs. Tenebro that she had little hope of being approved to

remain here as a legal resident without a change in immigration law. He risks drawing the attention of his commanders and the immigration authorities to his wife's illegal status.

Mrs. Tenebro is snagged on a statute, notorious among immigration lawyers, that makes it virtually impossible for her to become a legal resident without first leaving the United States and staying away for 10 years.

Because of the Catch-22, the severe penalty applies to Mrs. Tenebro even though she is the wife of an American citizen who is also an active duty serviceman. Lieutenant Tenebro, who was never in the United States illegally, was naturalized in 2003.

The legal boomerang that snared her and many others was created in 1996, when Congress imposed automatic restrictions on illegal immigrants, barring them from returning for periods of 3 to 10 years after they leave the country, regardless of whether they were deported or left voluntarily. However, in many cases the law also requires immigrants who are approved for legal documents to complete their paperwork at American consulates in their home countries.

The Tenebros' immigration troubles began with a moonstruck romance. They met one weekend five years ago while Wilma was on vacation in New York at the end of a job as a housekeeper on a cruise ship. She did not return to the Philippines, and eventually she overstayed her visa.

Love led to marriage, and their daughter, who is now 3, and an expensive battle to gain legal status for Mrs. Tenebro, 37.

In 2008, Citizenship and Immigration Services, the federal agency, gave Mrs. Tenebro approval to become a legal permanent resident, as the spouse of an American citizen. In general, immigration law is intended to make it easy for foreigners who marry citizens to become legal residents.

But because of the particular visa she overstayed — known as a crewman's visa — she is required to finish the paperwork for her green card in the Philippines. Every one of a string of lawyers the couple consulted — \$7,000 in fees so far — gave them the same bad news: Even though Mrs. Tenebro has qualified for a green card, if she leaves the United States to get it, she will automatically trigger the legal bar that will block her from returning for 10 years.

In rare circumstances of severe hardship, consular officials have the authority to grant waivers allowing spouses to return here more quickly. But officials in Manila are known among lawyers for being especially reluctant to give waivers.

For his wife, Lieutenant Tenebro said, the visa offered in Manila is "like the cheese in a mousetrap. It's like, hey, come and get it! And then, swat! They'll get you."

One lawyer after another suggested the same option, he said: "Wait until there is a change in the language of the law."

Susan Timmons, who runs the military assistance program for the immigration lawyers association, said there was little lawyers could do in such cases.

"If you do try to follow the law, you run into a serious problem and you won't be able to fix your situation," Ms. Timmons said. Her program has received hundreds of similar cases from American soldiers, she said.

Lieutenant Tenebro said he and his wife believed they were following the rules by prolonging their courtship and waiting for several months after their marriage in February 2007 to file for her immigration papers, so it would be clear that their marriage was not fake.

They remember the first time a lawyer explained the decade-long separation they could be facing. "I didn't

want to show emotion, but it was like shock," Mrs. Tenebro said. "I was thinking, to be away from my family is hard."

Representative Lofgren and Senator Robert Menendez, Democrat of New Jersey, have proposed bills that would make it easier for spouses and close relatives of Americans in the military to become legal residents. Those bills are included in immigration overhaul legislation, including measures to grant legal status to millions of currently illegal immigrants, that Democratic Congressional leaders are preparing.

But after the furor over the Arizona law, President Obama said Wednesday that he wanted to "begin work" on the overhaul — but not try to pass a bill — this year. Republicans argue that the administration should concentrate on enforcement, not on easing the law.

"Millions of individuals come to the U.S. on visas every year and don't overstay them," said Representative Lamar Smith of Texas, the senior Republican on the House Judiciary Committee. "Congress has already provided for remedies in appropriate cases, so there should be no need to change the rules."

Homeland Security officials said that in the absence of Congressional action, they had been working quietly to fix immigration problems for American soldiers on a case-by-case basis, using limited authorities that already exist in law. After a preliminary review of the Tenebros' case in response to a reporter's questions, Citizenship and Immigration Services officials said they were working to identify legal alternatives for them.

"Keeping U.S. military families together is a vital priority," said Matt Chandler, a Homeland Security Department spokesman.

Now, instead of a foreign mission, Lieutenant Tenebro is running a marathon every month or so, raising money for veterans coming back with injuries. At home on Long Island, Mrs. Tenebro, who cannot work legally, feels a chill every time immigration news comes on the radio.

"We just have our bags packed all the time in case immigration will come knocking on the door," Lieutenant Tenebro said "We talk about what school to pick and what apartment to get. But it's in the Philippines.