

### **The Definition of Marriage**

There is no exact definition of marriage in the immigration laws. Marriage is a subject matter of the laws of the state or country where the marriage was entered into. Federal laws usually recognize the validity of a marriage if the marriage was valid in a state or another country where the marriage was entered into.

However, according to The Defense of Marriage Act, U.S. Congress clarifies that the word "marriage" means only a legal union between one man and one woman as husband and wife and the word "spouse" refers only to a person of the opposite sex who is a husband or wife.

Apparently, the U.S. Congress interprets that marriage exists only between male and female. Thus immigration laws do not accept gay or lesbian marriages.

#### 2. The Definition of Spouse

There is no specific statutory definition of spouse. Immigration laws define spouse more by what it is not than what it is. Immigration laws state that a person does not qualify as a spouse, husband, or wife for immigration purposes if the marital relationship was created by a marriage ceremony where the parties were not physically present in the presence of each other, such as a proxy marriage, unless the marriage has thereafter been consummated.

The USCIS always considers the following factors in determining whether a spousal relationship can form the basis for an immigration petition:

1. The marriage must have been valid at the time it was performed;
2. The marriage must still be in existence; and
3. The marriage must not have been entered into for the purpose of conferring permanent resident

### **Immigration petition for alien spouse of a U.S citizen**

The spouse of a U.S. citizen is regarded as an "immediate relative" of the U.S. citizen for immigration purposes. The procedure for the immigration petition for the spouse of a U.S. citizen is:

1. In the first scenario, the alien spouse is already in the U.S. under a nonimmigrant status. In this case, the U.S. citizen may file an immigration petition (I-130) and the alien spouse may file an application to adjust status to permanent resident (I-485) at the same time.
2. The second scenario is when alien spouse is outside the U.S. In this case, the U.S. citizen needs to file an immigration petition and request that the USCIS notify a U.S. Consulate in the country where his spouse lives. Once the immigration petition is approved, the National Visa Center of the U.S. State Department sends "Packet 3" to the U.S. citizen. After the necessary forms are

completed, the alien spouse goes to the U.S. Consulate overseas to apply for an immigrant visa. On the day that the alien spouse enters the United States on an immigrant visa, he becomes a U.S. permanent resident.

### **Immigration petition for alien spouse of a U.S. permanent resident**

A U.S. permanent resident may petition for his alien spouse. The alien spouse of a U.S. permanent resident is categorized as a beneficiary of Second Preference A under the family based immigration. The procedure for this immigration petition is:

1. In the first scenario, the alien spouse is already in the U.S. under a nonimmigrant status.. In this case, the permanent resident may file an immigration petition (I-130) for the alien spouse. The alien spouse has to wait for the immigrant visa number to become current before he may apply to adjust to permanent resident (I-485)status. During this waiting period, the alien spouse needs to independently maintain a valid nonimmigrant status.
2. The second scenario is when the alien spouse is outside the U.S. In this case, the U.S. permanent resident needs to file an immigration petition and request that the USCIS notify a U.S. Consulate in the country where the alien spouse lives. Once the immigration petition is approved and an immigrant visa is available, the National Visa Center of the U.S. State Department sends "Packet 3" to the U.S. citizen. After the necessary forms are completed, the alien spouse goes to the U.S. Consulate overseas to apply for an immigrant visa. On the day that he enters the U.S. on an immigrant visa, he becomes a U.S. permanent resident.

### **Conditional permanent residence**

If a person is the spouse of a U.S. citizen or a permanent resident and the marriage occurred less than two years before the alien spouse is admitted as a U.S. permanent resident, the permanent residence status is conditional. The alien spouse is given conditional resident status on the day he is lawfully admitted to the United States on an immigrant visa, or receives adjustment of status were he to stay in the U.S.

### **Removal of Conditions on Permanent Residence**

The immigration laws presume that this marriage was entered into solely for the purposes of immigration and the petitioning resident and the conditional resident must prove that they did not get married to evade the immigration laws of the U.S.

1. A U.S. citizen or a permanent resident and his spouse must apply together to remove the conditions on the spouse's residence. They should apply during the 90 days before the second anniversary as a conditional resident. Usually, the expiration date on the alien spouse's green card is also the date of his second anniversary as a conditional resident. If they do not apply to remove the conditions in time, the alien spouse could lose his conditional resident status and be removed from the U.S.
2. If the conditional resident has been battered or abused by his U.S. citizen or permanent resident spouse, the alien may apply to remove the conditions on his permanent residency at any time after he becomes a conditional resident, but before he is removed from the U.S.
3. If the marriage becomes not viable, that is, the couple is separated or no longer shares a household, the petition to remove the conditions of residence shall not be denied provided that the conditional resident can show that the marriage was entered into in good faith and with a genuine desire for a marital relationship, and not solely for immigration purposes.
4. If the couple is divorced, the alien may also apply to remove the conditions on his permanent residence at any time after he becomes a conditional resident, but before he is removed from the U.S.
5. If the alien spouse's child received conditional resident status within 90 days after the alien spouse did, then the child may be included in the alien's application to remove the conditions on permanent residence. However, the child must file a separate application if the child received conditional resident status more than 90 days after the alien spouse did.