

A word about Immigrating to the U.S. through Marriage

The most common way many immigrants obtain Lawful Permanent Residency is through marriage to a U.S. citizen. Many people think this is probably the easiest way to get a Green Card and that the act of marrying a U.S. citizen can stop deportation. Unfortunately, because of the Immigration Marriage Fraud Amendments of 1986, this is not necessarily nor always true. Marriages are highly scrutinized and require intense documentation in order to obtain a favorable result. In addition, there are consequences for sham marriages entered into solely for the purpose of obtaining a Green Card.

A U.S. citizen who wishes to marry, but has a fiancé(e) outside the United States, must file a petition for his or her fiancé(e) in order to get the fiancé(e) to the United States. The U.S. citizen must prove that s/he has been in a relationship with the fiancé(e) during the last two years. The longer the relationship, the stronger the case. The parties must provide documentation to show they have met one another in person. These cases are highly scrutinized, especially in this age of internet chat rooms, on line dating services and mail order bride programs. An immigration office will examine everything submitted. S/he will read in detail written correspondences between the parties to determine the level of involvement of the two individuals, will examine photographs and expect to see plane ticket stubs and hotel receipts.

The International Marriage Broker Regulation Act makes it a mandatory requirement that U.S. citizens who have criminal backgrounds disclose to their fiancé(e)s their criminal record. The fiancé(e) will be interviewed at the U.S. Embassy abroad and questioned about the length and extent of the relationship in addition to knowledge of any criminal history of the U.S. citizen sponsor. If the fiancé(e) is unaware the U.S. citizen has a criminal background, or they have not met in person, or information provided from the fiancé(e) is not consistent with information provided by the U.S. citizen sponsor, the case will most likely be denied. If the case is approved, then the fiancé(e) will receive a visa and can come to the United States. The parties must marry within 90 days of the fiancé(e)'s arrival and apply for a Green Card shortly thereafter. If the marriage does not work out and the parties divorce before or after the application for the Green Card is filed or before it is approved, then the fiancé(e) cannot change his or her status through marriage to someone else. The fiancé(e) must return to his or her country of origin or remain in the U.S. illegally until some earth shattering change in law occurs.

For those immigrants who are in the U.S. and find a U.S. citizen to marry, the conditions are somewhat different. It should be noted that not all persons who marry U.S. citizens even qualify for a Green Card. If the immigrant entered the United States without a valid passport and entry permit, then that immigrant spouse is NOT eligible for a Green Card. That is, if the immigrant came by boat or across a border on foot, then s/he is not likely eligible to get a Green Card even if they are married to a U.S. citizen. There is only one tiny exception for this rule and intense review of the case by a lawyer must occur to determine whether a person who entered the country without a visa and passport can get a Green Card. Further, those who get married while the immigrant is in deportation proceedings are assumed to have a sham marriage, thus the burden of proof increases for the U.S. citizen and the immigrant.

Assuming all conditions are ok and the immigrant came with a visa and passport or was inspected by an Immigration officer at the airport or border outpost, the U.S. citizen and his or her immigrant spouse must submit paperwork together and prove the marriage is not a sham. This process of getting a Green Card through marriage requires a personal interview where an immigration officer reviews documentation provided about the marriage in addition to making a subjective opinion of the couple. An Immigration Officer may ask questions about the couple's history together. The couple will be asked to provide documents to show they are residing together and should have at least three (3) months worth of paperwork in addition to a photo album. The most important evidence is financial documentation. If the couple doesn't have much together, then their case is much weaker than it could be and risk receiving a denial. If there is evidence of marital infidelity, or responses to questions don't make sense to the Immigration Officer, an allegation of marriage fraud may result. If this occurs, then the couple can dispute the finding and must prove the legitimacy of their marriage. If a finding of fraud occurs, then the parties will suffer the immigration and legal consequences.

A couple facing a charge of marriage fraud can face up to \$250,000 of a monetary fine, in addition to criminal prosecution resulting in up to 5 years imprisonment and deportation for the immigrant spouse and a permanent bar to re-entry to the country. If the marriage is less than two years old when the parties have their interview and the petitions are granted, the immigrant will receive a two year Conditional Resident Card. This means that there is an incentive for the couple to stay together for at least two (2) years because at the end of the two years the immigrant and his or her U.S. citizen spouse must jointly file another petition and submit additional paperwork to show they are still living together in order to remove the conditions of residency so that s/he can obtain Lawful Permanent Residency and remain in the country indefinitely.

There are exceptions to a joint filing, however. If the immigrant is a battered spouse, or a divorce occurred, or if the U.S. citizen spouse dies, then the immigrant can file the petition by him or herself so long as s/he submits documentary proof that they resided with the U.S. citizen spouse prior to termination of the marriage relationship. Failure to file the petition to remove conditions can result in termination of the status and deportation. Further still, if the immigrant is not able to divorce and is only separated this can cause serious problems for the immigrant. It should be noted that the process to remove conditional residency can take up to three years. So it is important that the parties love and understand each other and the process involved. If the immigrant and the U.S. citizen are in wedded bliss, and the marriage makes it to the stage where Conditional Resident status is granted and they jointly file a petition to remove the conditions, the immigrant will have permanent residency status and can apply for naturalization.

A word of caution: Although marriages seldom last a lifetime in this day and age, the Immigration process places unique strains on the institution. The immigrant spouse is and will be dependent on the U.S. citizen spouse until s/he obtains employment authorization and a social security card. The threat of deportation is always a reality that is but should not be held against the intending immigrant. Individuals should be reasonable and understand the nature of the immigration process may require long

physical separation for fiancé(e)s and spouses overseas, and the process of immigrating is not cheap and requires the U.S. citizen sponsor to make a minimum level of income.