

IMMIGRATION LAW

Expert Analysis

Spring Weddings: Beautiful New Beginnings and a 'Green Card'

"The beautiful spring came; and when Nature resumes her loveliness, the human soul is apt to revive also."

—Harriet Ann Jacobs¹

The classic signs that spring has finally arrived are easy to spot and a relief to us all after a hard winter. Warmer temperatures, the tiniest buds on the trees and the barest traces of flowers beginning to bloom are all a welcome sight. A less obvious sign that spring is upon us but one that is very familiar to many U.S. immigration lawyers is the increase in inquiries about obtaining U.S. permanent residence through marriage to a U.S. citizen. This year, in particular, I have personally experienced a sizeable upswing in interest and actual filings of marriage-based green card² applications.

The increase in volume cannot be easily attributed to any recent changes in U.S. immigration law or policy. None of the reforms announced by President Barack Obama last year, including the programs bringing relief to an estimated five million individuals that are currently on hold due to the lawsuit and injunction in the U.S. Court of Appeals for the Fifth Circuit, create any novel path or benefit for the spouses of U.S. citizens or U.S. permanent residents.

The rise in interest in these types of filings may be due to a variety of rea-

sons including the continued improvement of the U.S. economy, the increased desirability of living and working in the United States, the vagaries of the human heart and love and all the innumerable reasons why people decide to legally marry and make a life together. Whatever the actual cause of my anecdotal reporting of an increase in marriage case filings, bona fide marriage cases are a welcome part of many U.S. immigration lawyer's practices.

It is a sincere privilege to be able to assist couples, without regard to sexual orientation, race or nationality, in the required steps to make their desire to live in the United States a reality and to ensure that the U.S. immigration part of the process is handled ethically, lawfully and efficiently. U.S. immigration lawyers also serve an important role in demystifying the steps of a process that can seem fairly complicated for people to grasp, especially after reading unqualified advice online or hearing both success and horror stories from others who have gone through it.

This article is meant as a helpful introductory guide for individuals trying to understand the process.

By
Alexis S.
Axelrad



Preliminary Steps

One of the most widely held misconceptions concerning U.S. immigration law is that a foreign national automatically acquires U.S. citizenship upon marriage to a U.S. citizen. This is patently incorrect although frequently perpetuated in the media and popular culture. U.S. citizenship can only be acquired at birth and not through marriage.³ Marriage to a U.S. citizen, however, does provide an underlying basis for a foreign national to be eligible to apply for U.S. lawful permanent residence.

There are a number of threshold questions that must be asked by competent U.S. immigration counsel to determine a foreign national's eligibility to apply for a green card based on marriage to a U.S. citizen, chiefly where the couple currently resides and their plans for residence in the future. If the foreign national is currently in the U.S. whether they made a lawful admission, overstayed their time or entered the United States without inspection.

These threshold questions are critical in setting the best strategy on how, when and where to file the necessary paperwork with the U.S. Citizenship and Immigration Services (USCIS) assuming the foreign national is eligible for a green card after marriage to a U.S. citizen.

Reviewing Personal History

The most important set of questions to ask and work through even before

a couple decides where they plan to reside together is their personal history including any U.S. immigration history. These can be very sensitive questions for a couple to ask each other or work through especially if there are wrinkles in that history and certain information was not previously disclosed. The prudent U.S. immigration lawyer must ask uncomfortable questions at the start of planning any marriage based green card filing.

For some couples it can be an amusing ice breaker when the immigration lawyer asks the foreign national spouse whether they “plan to practice polygamy...have been a habitual drunkard... have committed a crime for which they have not been arrested for, or engaged in any unlawful commercialized vice, including but not limited to, illegal gambling.”⁴ For other couples this can be a time of discovery of closely guarded secrets or remnants of previous relationships and activities that then come to light.

I urge all couples to be as honest as possible with each other and their immigration lawyer in the preliminary stages of planning the green card filing and throughout the entire life of the case. Withholding crucial information related to the foreign national’s admissibility to the United States and eligibility for U.S. permanent residence in the early stages may cause the green card to later be denied and the foreign national ultimately ordered removed from the United States.

The U.S. citizen spouse must also be as candid as possible in this process. The U.S. citizen spouse, who is considered the petitioner in this process (the foreign national is the beneficiary), will also undergo security checks and screening by USCIS. While the checks done on the petitioner are not initiated by the submission of fingerprints to USCIS as they are required for the beneficiary, a petitioner will still undergo an identifying factors check within various USCIS and law enforcement databases.

Avoiding surprises at the interview stage is incredibly important. Many of the wrinkles described above can either be eliminated prior to filing of the necessary paperwork, or at least mitigated through the filing of any available waivers at the time the main paperwork is filed. USCIS puts a premium on disclosure of possible negative facts. Withholding information of a specific negative factor even if it would not by itself render the foreign national spouse ineligible for a green card could still prove fatal if USCIS believes the beneficiary misrepresented a fact. The lie is worse than the crime in many cases.

Marriage to a U.S. citizen provides an underlying basis for a foreign national to be eligible to apply for U.S. lawful permanent residence.

The Filing Stage

The required forms and supporting documentation vary depending on the strategy set for each particular case, most commonly whether the couple is currently residing in or outside the United States, was just married or has been married for many years, and many other factors for immigration counsel to consider when advising clients.

Generally couples should make sure to have in their possession original identity documents (e.g., birth certificates with English translations that list both parents’ names in full), evidence of a legal marriage (e.g. original marriage certificate, divorce or death certificates as evidence the current marriage was lawful at the time of inception), evidence the couple is in a bona fide marriage (e.g., evidence of cohabitation, commingling of possessions and assets, children born of the marriage, etc.), and finally evidence the U.S. citizen petitioner can show sufficient income or assets to

execute the required affidavit of support (e.g., U.S. federal tax return with all schedules and attachments and W-2 Wage Statement or Form 1099).⁵

Original documents are not filed with USCIS for the most classic type of marriage case, where the petitioner and beneficiary both currently reside in the U.S. and the beneficiary has evidence of admission to the U.S. Clear color copies are sufficient to include in the preliminary filing with USCIS. However, the original documents will need to be presented at the time of interview for a USCIS officer to review. It is not prudent to file a marriage case without having the original documents on hand or know they will be readily available.

Interview Stage

If the couple resides in the U.S. and the case is filed as an adjustment of status for the foreign national spouse, an interview is a mandatory part of the process. The initial filing is made to a USCIS Lockbox for collection of the required filing fees and then forwarded to the USCIS National Benefits Center (NBC) for adjudication of the ancillary applications for employment and travel authorization and the I-864 Affidavit of Support. Once the NBC has completed the preliminary parts of review and adjudication the USCIS local office with jurisdiction over the couple’s place of residence will schedule them for an in-person interview.

In the New York and New Jersey area, couples are currently being scheduled for their marriage interviews four to six months from the time of filing their preliminary paperwork with USCIS. This is a major improvement over the three to five years it took a decade ago for interviews to be scheduled.

For most couples the interview is nothing to be feared. It is a routine process, fairly short in duration where the USCIS officer reviews the documents to confirm that the copies of the identity and relationship evidence submitted with the initial application match the original documents presented at the

time of interview. The officer will also ask questions of the couple to confirm they know basic biographical information about each other and the history of their relationship, and the foreign national will be asked under oath the questions related to admissibility contained in their Form I-485.

Unlike how marriage case interviews are frequently depicted in popular culture (the movies "Green Card" (1990) and "The Proposal" (2009) come to mind) most couples will not be separated and asked an exhaustive list of questions or followed at home or on

incomplete, the green card will take longer to be approved.

Couples should be aware that if they have been married for less than two years at the time of their interview and approval, USCIS will issue the beneficiary a conditional green card valid for two years. In the 90-day window prior to expiration of the temporary green card the couple will need to file additional paperwork to have the conditions on residence lifted. This is known as the I-751 process. What is vital to remember for the I-751 stage is to continue to collect evidence of cohabitation and

they meet all the other criteria for eligibility for U.S. citizenship (e.g., good moral character, physical presence). If the foreign national decides not to file on the basis of marriage to a U.S. citizen they will need to wait until they have had their green card for at least five years and all the other requirements for U.S. citizenship are met.

Happily Ever After

Love may be a many splendored thing but the process of obtaining a green card through marriage to a U.S. citizen can be fraught with obstacles and confusion even for couples who believe their case is very simple. I urge all couples contemplating this process to seek out competent U.S. immigration counsel to work out the best strategy for filing. Most importantly, having a trusted adviser to shepherd you through each phase from initial green card, to removing the conditions on residence and finally to U.S. citizenship, reduces stress and worry in what should be the beautiful spring of your lives.

Withholding crucial information related to the foreign national's admissibility to the United States and eligibility for U.S. permanent residence in the early stages may cause the green card to later be denied and the foreign national ultimately ordered removed from the United States.

vacation by USCIS officers at the time of the initial interview. This does not mean that USCIS does not fully investigate a couple if negative information comes to light during or after the process or may schedule the couple for a second interview if the first one goes poorly.

Couples should be aware that the image they present through their paperwork and at the time of interview can be compared and contrasted with their digital footprints and other easily acquired information about residence, marital status and criminal histories. The consequences for filing a fraudulent marriage case are severe and permanent and not advisable.

Post Interview

If all goes well at the time of interview the USCIS officer will recommend approval of the underlying paperwork and a green card will be issued within a week or two of the interview. If new issues came to light at the time of interview, additional documents requested or security checks were

the bona fide nature of the marriage during the two-year temporary period. Couples should keep an actual shoe box or digital one with pictures from vacations, joint credit card and utility bills, joint insurance, jointly filed tax returns, joint lease or deed and any other evidence that shows they have continued on as a couple.

If for whatever reason the marriage has broken up before the two-year period the beneficiary may still apply to have the conditions on their residence removed but the burden of proof to show the marriage was a bona fide one at inception is higher.

If a couple has been married for more than two years at the time of their marriage interview and approval with USCIS the beneficiary will be issued a green card valid for 10 years. There will be no need to go through the I-751 process in this scenario.

In either case described above, the foreign national spouse will be eligible to apply for U.S. citizenship on the basis of marriage to a U.S. citizen after three years of having a green card assuming

1. Harriet Ann Jacobs (1813-1897), born into slavery, sexually victimized by her owner and later freed after her daring escape was a groundbreaking writer, poet and abolitionist. Jacobs epitomizes the very best of the human spirit and triumph over adversity. To learn more about her incredible life visit <http://www.harrietjacobs.org/index.html>

2. Colloquially known as a "green card" the actual name of the document that is issued as evidence of U.S. lawful permanent residence is an Alien Registration Card.

3. The statutes, regulations and case law governing acquisition of U.S. citizenship at birth and derivation of U.S. citizenship are complicated and extremely case-specific. For review of the law in this area start with Immigration and Nationality Act (INA) §301-309, §320 and The Child Citizenship Act of 2000 (CSPA).

4. These questions and many more in similar vein are asked on USCIS' Form I-485, Application to Register Permanent Residence or Adjust Status. Form I-485 is one of the primary forms filed in the marriage-based green card package if being filed in the United States. For a full review of all the questions USCIS asks to determine eligibility for a green card see: <http://www.uscis.gov/sites/default/files/files/form/i-485.pdf>

5. USCIS' Form I-864, Affidavit of Support is a required part of the marriage-based green card filing. Through the I-864 the petitioner contracts with the U.S. government to be responsible for reimbursement of any means-tested benefits the foreign national spouse may use once obtaining a green card and up to 40 quarters of employment (10 years) or until they acquire U.S. citizenship.