

## **Marriage between a U.S. Citizen or Permanent Resident and an Alien**

On a university campus it is not unusual for people from different countries to meet and marry. From a visa and immigration status perspective, these marriages take one of three forms:

- Marriage between a United States citizen (USC) and foreign national who holds temporary status in the U.S.
- Marriage between a United States Lawful Permanent Resident (LPR) or "green card" holder and a foreign national who holds temporary status in the U.S.
- Marriage between two foreign nationals who hold temporary status in the U.S.

This handout focuses primarily on marriage between a USC and a foreign national. Some of the information will be useful to others considering marriage in the U.S. This handout is not designed to replace legal services from an experienced immigration lawyer. Temple University cannot advise you on personal immigration issues like marriage. We can only give you this basic discussion that will help you find government resources and talk more effectively with your attorney.

### **Q1. Is there a legal/visa difference among marrying a U.S. citizen, marrying a lawful permanent resident, and marrying someone else who holds temporary status in the U.S.?**

A1. Yes, there is an important and very time relevant difference.

- Persons married to US citizens are considered "immediate relatives" in the immigration process and can apply immediately for LPR status. The USC spouse may file an immigrant petition (Form I-130) for the alien spouse immediately after the marriage. The alien spouse may file an application for adjustment of status to LPR (Form I-485) and accompanying requests for interim work permission (Form I-765), and Advanced Parole interim travel permission (Form I-131) immediately after marriage. Alternately, the alien spouse abroad may apply for an immigrant visa to travel to the U.S. as soon as the I-130 is approved. See also Q4 and Q5 regarding the K visa.
- Persons married to LPRs are "Family Sponsored, Second Preference" in the immigration process. The LPR spouse may file an immigrant petition (Form I-130) for the alien spouse immediately after the marriage, but the alien spouse must wait for a visa "number" or space to become available before becoming eligible for adjustment in the U.S. or an immigrant visa abroad. This wait can take many years, and the marriage *gives **no** interim or temporary right to be present in or employed in the U.S.* The alien spouse must wait outside the U.S. or hold his/her own independent temporary status in the U.S. For more information on the wait time for LPR-based marriage see the Department of State (DOS) web site at [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_2616.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_2616.html) . Scroll down to the chart on "Priority dates for Family Based..." and look at the line for Preference 2A.
- Persons who hold temporary status in the U.S. and who marry each other need to consider the temporary visa status options open to them. In general temporary status is as the "principal" or person engaged in the specific activity, such as F-1, J-1, H-1B, O-1, TN, and so on. The dependent or family status, such as F-2, J-2, H-4, O-3, or TD only exists if the principal maintains status. In a marriage each person could hold his or her own principal status, or one person could change status to the dependent status of the other. As time lines can be very important in change of status situations, persons considering marriage should look closely at their options and how to preserve and take advantage of their opportunities.

## **Q2. We are planning to get married in the U.S. How do we do that? What are the legal steps?**

A2. There are a number of steps, some legal, and some customary or cultural.

**First – free to marry.** You must be sure that both of you are legally free to marry.

- Generally the U.S. recognizes any marriage that is recognized in another country, and does *not* permit polygamy (having more than one spouse) in the U.S. If either of you is already married in the U.S. or in another country, you must terminate that current marriage first. Be sure you have legal documents showing termination of any prior marriage.
- If the country in which the marriage occurred does not recognize divorce, do not despair. The U.S. recognizes a U.S. divorce, even if the marriage occurred in another country that does not recognize divorce. You could arrange to be legally divorced in the U.S., and thus free to marry in the U.S. However, that divorce will probably have no effect on the earlier marriage in a "no divorce" country. That means that you could legally be married to the earlier spouse in the other country and the new spouse in the U.S. You may also be violating polygamy laws in the other country.
- If your country or culture practices infant or child marriage, and you are a party to such a marriage, you need to assess whether that marriage is recognized in the U.S.
- If your country or the U.S. jurisdiction in which you marry recognizes same sex marriages, that marriage is *not* recognized in the U.S. for immigration purposes. In the U.S. the question of the legality of same sex marriages is working its way through the courts, but immigration on this basis is many years away.

You can see how things could get very complicated. We strongly recommend that you discuss all of these prior marriage relationships with your immigration lawyer to avoid future unhappy surprises.

**Second – old enough to marry.** You must be old enough to marry in the jurisdiction where you plan to be married. Different states have different lower age limits. For example, in NC, anyone under 18 years old must have special permission to marry. If either of you is under the age of 21, check the rules for the state in which you plan to marry.

**Third – licensed to marry.** You must obtain a marriage license from the jurisdiction in which the marriage ceremony will occur, not necessarily the place where you live. In North Carolina, marriage licenses are issued at the county level, but are valid throughout the state. You could get a license in one county and be married in another county, but the marriage would be recorded by the Register of Deeds in the county that issued the license. A marriage license issued in one state is *not* generally valid for a marriage ceremony in another state. Each state has its own rules. For information on a marriage license in Philadelphia visit <http://www.phila.gov/justice/orphans/index.html>

If you own houses, land, businesses, and so on, check with a lawyer regarding which property rights may convey to the spouse at marriage. Different states have different rules. Some couples choose to sign prenuptial (before marriage) agreements regarding property, financial holdings, and so on. While people generally do not expect to be divorced, life is uncertain, and dealing with these issues now can save difficulty in the future.

**Fourth – recognized official to perform the ceremony.** The marriage must be performed by someone authorized and recognized by the state to perform marriages. You may have either a civil or a religious ceremony, or both, in almost any environment you choose, but for the marriage to be legal for immigration purposes, it must be performed by someone legally authorized to do so.

- In general all U.S. states recognize religious leaders who normally perform such functions for their religious groups. If in doubt, ask the religious representative who is going to perform your marriage whether he/she is authorized to do that. The religious freedom guaranteed by the U.S. Constitution means that many religious groups exist in the U.S., each with a right to establish the terms under which it will perform marriages. Some groups require you to be a member of their group for you to be married in their house of worship or by their religious leader. Other groups will allow persons who are not their members to use their buildings, and their religious leaders will perform the ceremonies. Some groups may require you to undergo a special marriage or religious training program prior to marriage. Representatives of religious groups will usually accommodate the wishes of the bride and groom as to time and location of the ceremony. All of this is optional for you. You are *not* required to have a religious ceremony.
- A civil (nonreligious) marriage can be performed by a government official. Government officials will usually only do the ceremonies at the government offices during usual business hours, as this is their job. In some states, though not in Pennsylvania, a Notary Public can perform a marriage. Also a "justice of the peace," made famous in so many Hollywood films, can perform marriages in some states.
- The only difference between a religious marriage and a civil marriage is personal preference. Some people just want to get the legal stuff done so that they can file immigration papers. Others want to celebrate the event with friends and family. Some people choose to have a quiet civil ceremony to be able to begin the immigration process, and then have the larger religious or social event later. Either marriage is legal for visa and immigration purposes.

**Q3. We are already married. What is the next step to get into the U.S. or to get LPR status based on marriage?**

A3. The Department of Homeland Security (DHS) has extensive information on its web site. Start with <http://uscis.gov/graphics/faqsgen.htm#marriage>  
<http://uscis.gov/graphics/howdoi/spouselive.htm>

Much of that information addresses adjustment of status for a spouse who is already in the U.S. and wishes to stay here and do the paperwork here.

You may also do "consular processing" in which the USC files a petition with DHS. After that petition is approved, DHS notifies the U.S. embassy or consulate abroad. The alien spouse does all of the immigrant visa processing at the embassy or consulate and enters the U.S. in LPR status. For additional information on consular processing see the DOS web site or the web site of the embassy or consulate that will handle the process.

[http://www.travel.state.gov/visa/immigrants\\_types\\_marriage.html](http://www.travel.state.gov/visa/immigrants_types_marriage.html)  
[http://travel.state.gov/visa/questions\\_embassy.html](http://travel.state.gov/visa/questions_embassy.html)

Each process has strong positives and negatives. You need to discuss your specific situation with an experienced immigration attorney.

Note especially one area that can cause difficulties for young couples at the undergraduate, graduate, or postdoctoral level – adequate funding. The USC must show sufficient funds to support both the USC and the alien spouse (and any children included in the process) at 125% of the federal "poverty" rate. The USC, or someone in his/her behalf, must sign an Affidavit of Support, Form I-864, to that effect. The Form I-864 and its extensive instructions appear on the DOS web site along with a link to the current poverty guidelines.

<http://uscis.gov/graphics/formsfee/forms/index.htm>

Scroll down to Form I-864, click on that form to open that file, and scroll down to the bottom for links to the form, the poverty guidelines, and other information.

**Q4. We are planning to get married but we want to make sure that we can have our wedding and/or honeymoon outside the U.S. exactly like we want it and still get back to the U.S. in time to start school or work. How can we be sure that we can do all of that?**

A4. Give up on that idea immediately. You cannot have that level of control over all of the elements involved. You would need direct and detailed control over: your wedding plans, your travel plans, processing times at DHS for at least one and perhaps four different petitions or applications; perhaps visa issues for the USC traveling to another country; or for both of you traveling to a third country. You simply cannot control all of those government and private agencies, or even get reliable processing time estimates from them.

You will have to make some difficult decisions. Here are a few very broad scenarios, but you will need an experienced immigration attorney to help you coordinate marriage, travel, and LPR processing.

- Most control. Civil marriage in the U.S. to start the immigration process. File I-130 (petition), I-485 (adjustment), I-765 (work permission request), and I-131 (travel permission request) all at the same time. Wait for approval of the I-131. Arrange the family or religious ceremony and/or the honeymoon inside or outside the U.S. as you choose.
- Medium control. Marry abroad. Use the K (spouse/fiancé/fiancée) visa to enter the U.S. The K visa process will take several months.
- Medium control. Use the K visa to travel to the U.S. for the purpose of marriage. Marry in the U.S. after arrival. File for adjustment of status to LPR.
- Minimal control. Get married abroad and try to get all of the LPR visa work done after the wedding.

All of these options have many variations.

**Q5. What is the K visa? Is it only for those who are engaged or can it be used for those who are already married?**

A5. In the past the K visa was available only to the fiancé/fiancée of a USC. It is now available to persons who are already married so that the alien spouse can enter the U.S. soon after the marriage. See the DHS web site

<http://uscis.gov/graphics/howdoi/fianceapp.htm>

In general, it works this way.

- USC files the K-1 petition with DHS for the fiancé/fiancée or the spouse.
- DHS approves the K-1 petition and notifies the consulate specified by the USC.
- The Department of State (DOS) Consulate issues the K visa to the alien.
- The alien enters the U.S. either to join the USC spouse or to marry the USC fiancé/fiancée.

This sounds simple, but remember that you cannot control the time it takes for any one of these things to happen. DHS and DOS processing times vary based on their workloads.

**Q6. I have heard that the marriage-based green card is only temporary. What does that mean and how can we be sure the green card is permanent?**

A6. The LPR status based on marriage must be based on a *bona fide* or good faith marriage, one that is entered into as a true marriage, not as a sham marriage just for immigration purposes. In order to help determine that the marriage is *bona fide*, Congress wrote a special provision in the law that makes the LPR status based on marriage "conditional" for two years. Just before the end of the two years, the couple must file a request to have the condition removed and must present evidence to show that they are truly married, and not involved in a sham marriage. For more information on removing the condition and on the evidence required, see the DHS web site at

<http://uscis.gov/graphics/howdoi/remCond.htm> .

**Q7. I am married to a USC, but my spouse is abusing me. I married in good faith, but I cannot stay in this relationship. Is there any way that I can get out of this marriage and still get or keep my green card?**

A7. Yes! First get help to get out of the abusive environment. Contact local authorities. If you are at Temple, talk with someone at Tuttleman Counseling Services on campus. Report any violence or abuse, and get to a safe place. Then get good legal help on the immigration issue. The immigration law has a special "Battered Spouse or Child" provision for you to apply on your own for LPR status. Learn more at the <http://uscis.gov/graphics/howdoi/battered.htm>

**Q8. Does my name change when I get married? Do I keep my own name? May I change it to anything I want or are there rules?**

A8. Marriage naming conventions vary widely around the world. Under PA law, the marriage permits a legal name change but does not require it. In modern times couples have begun to make two other choices: hyphenate both names so that each takes the name of the other; or each keep his/her own name. You need to discuss your choices with each other and with the Clerk of the Orphans' Court where you obtain your license to determine if you need to do anything special to legally use the name(s) you choose. Again, different states have different rules.

Remember that whatever legal name each of you chooses to use, you must use it consistently as your legal name for all official purposes, including the LPR card. You will normally need to show proof of marriage and proof of any other legal name change. Documents that will need changing include, but are not limited to: passport, driver's license, visa documents, rent/lease agreements, Social Security card, credit cards, health and life insurance, Temple payroll records, and Temple ID cards.

**Q9. I am a citizen and I have a friend who needs a green card. We thought we would get married and solve the visa problem. It would all be legal, and we like each other, but we know this may not be permanent. We probably won't tell all of our friends and relatives about it. We may live together, but maybe not. How should we proceed?**

A9. STOP!!! DON'T EVEN THINK ABOUT THIS ANYMORE!!.

What you are considering seems logical and helpful to your friend, but it is visa fraud. The alien can be deported and the USC can be fined and jailed.

**Q10. But marriage is our personal business. It is a basic human right and my right as a citizen to marry whomever I want. Many U.S. marriages don't last. U.S. couples sometimes live apart. How is this different? Why should anyone have to know? Why can't we just share an apartment and not tell anyone we are married?**

A10. As a USC under U.S. law and as persons (USC or alien) under basic human rights conventions, you have the right to arrange whatever marriage works for you – live together or apart, tell people or not, etc. That is your right, your personal choice. And you may marry for any reasons you choose – love, business partnership, wishes of your respective families, whatever.

It is not your choice *to* marry, but your reason *for* marrying that causes the problem. When you involve the federal government by requesting a benefit (LPR status) based on the marriage, then your marriage, itself, becomes the business of government. DHS is required by law to verify the *bona fides* or good faith of the marriage. You must appear in all ways to be truly married and not involved in a sham marriage in order to secure the federal benefit of LPR status.

Although the two-year conditional residence (see Q6) helps address this issue, DHS is authorized and required to explore the intent and character of the marriage. If you keep it a secret and behave as if it does not exist, then DHS can reasonably conclude that you entered into the marriage for LPR purposes only. DHS can deny the petition, revoke the LPR status, deport the alien, and charge the USC with a federal felony.

Of course, you may truly wish to be married and also have legitimate reasons for not wanting to make the marriage public. Perhaps one or both families object and would be hurt or angry if they knew. Perhaps one or both of you are movie stars and you don't want the publicity. In either case, if you plan to use the marriage for LPR purposes, you need to talk with an experienced immigration lawyer. Also remember that a marriage is a legal act, and is a matter of public record. Anyone who suspects that you are married could easily check public records to discover that.

**Q11. I have a slightly different question. How much do I have to reveal about my past marriages or family to my new spouse? How much of my prior family could be included in this immigration process? Maybe I have been married before, or I have children from another marriage or relationship, and I don't want my new spouse to know. Maybe I would like to get LPR status for my current children and bring them into this marriage.**

A11. As this is an information document and not a counseling document, we will not address the question of honesty in a marriage relationship. Instead we will look at the legal options.

Some information can be kept secret and some cannot. For example, in theory, the USC spouse could file the I-130 petition for the alien spouse without showing it to the alien spouse, and the alien spouse could file the I-485 adjustment application for himself/herself without showing it to the USC spouse. Of course, all of that could get a bit awkward – another good reason to consult an immigration attorney.

Regarding the inclusion of stepchildren (children by another marriage or relationship) in the LPR process, that can certainly be done. Many factors affect the inclusion of children: age; marital status; and whether the children are legitimate, have been legitimated, or have been otherwise recognized legally by the parent(s). Much also depends on whether you have legal custody of the children and/or whether the other parent would agree to have them included in the LPR process. An immigration attorney can help you determine who is eligible to be included for derivative LPR status.

Remember that with the exception of adoptions and some child custody arrangements, most family relationships in the U.S. are a matter of public record, and are often accessible electronically. The same is true in many other countries as well. Remember also that the power of the Internet is vast and global.

**Q12. OK, I understand the basics, but what forms do I file? How do I get started on the green card?**

A12. Start with the following web sites:

<http://uscis.gov/graphics/faqsgen.htm#marriage>

[http://travel.state.gov/visa/immigrants/immigrants\\_1340.html](http://travel.state.gov/visa/immigrants/immigrants_1340.html)

Consider consulting an immigration lawyer. Visit our website at

<http://www.temple.edu/OIS/home/prospective/documents/attorney.pdf>

<http://www.temple.edu/OIS/pdfs/probonoorlowcostlawyers.pdf>