

[Almost] All You Need is Love: Getting a Green Card through Marriage

By Kwang-Yi Ger Gale and Angelo A. Paparelli

Most people know that marriage to a U.S. citizen can allow a foreign spouse to obtain a “green card” – the legal status that permits a foreign citizen to live permanently in the United States. A common misperception, however, is that the marriage alone will confer some kind of automatic citizenship or lawful permanent resident status on a spouse from another country. What many people don't realize is that the immigration laws require that a formal process be followed, and that the process can change dramatically depending on the couple's location in the U.S. or abroad, travel plans and place of marriage.

Before describing the available procedures and choices, however, let's be clear about a few things. Marriages of convenience, paper marriages, marriages that occur only because the green card is the sole objective are wrong, stupid and illegal. The only legitimate reason to marry is that the man and woman love each other. Or, as the immigration law requires, they want to “make a life together.” Readers should know that the U.S. government despises phony marriages and will use every legal weapon in its arsenal to prosecute the U.S. citizen spouse and deport the foreign spouse. It won't necessarily happen like in the movie “Green Card” with Gérard Depardieu and Andie MacDowell, but it will be just as sad in the end.

Readers should also be aware that same-sex couples will not find comfort under U.S. immigration law because their relationship (even if they are married in a state or country where same-sex marriage is legal) will not be recognized for immigration purposes. This doesn't mean that they cannot get a green card for the foreign spouse; it just means that it will have to be done in another way, e.g., through employer sponsorship or immigration through a parent or other qualifying relative.

So, assuming that the marriage is based on love and involves an opposite-sex couple, here are points to consider. In the excitement of getting engaged and planning a wedding, it's easy to overlook the specific immigration steps that must be taken to make sure that a foreign fiancé(e) or spouse is able to enter the U.S. and live here legally. Immigration planning is as crucial as planning the wedding itself. If certain procedures are not followed in a timely manner and the wrong immigration strategy is chosen, a couple may be broken-hearted to find that they face a long period of separation, a delay in starting a life together in the United States, or other unexpected hardships.

But how do you know what the right steps are? This is where it becomes necessary to consult with an experienced immigration attorney who can help guide you through the options that are available to you and can help you avoid some of the common pitfalls that can occur for couples seeking to marry and start a new life together in the United States.

The K-1 Fiancé(e) Visa

Suppose a U.S. citizen is engaged to be married to a citizen of another country. As the American citizen, you plan for your fiancé(e) to travel to the United States for the wedding, and plan to live together in New York after your marriage. You might assume that it would make sense for your fiancé(e) to enter the United States on a visitor visa or as a visitor under the visa waiver program for the wedding. But because persons entering the United States as visitors are required to have only a temporary intent to remain in the United States, if you and your fiancé(e) have definite marriage plans at the time of the foreign citizen's entry, this can be considered visa fraud and can, among other serious consequences, prevent your fiancé(e) from being allowed to enter the United States.

Instead, one option that is available in this situation is a K-1 fiancé(e) visa. The K-1 is a nonimmigrant visa that allows the fiancé(e) of a U.S. citizen to enter the United States for the specific purpose of marrying the U.S. citizen.

The procedure for obtaining a K-1 visa involves the U.S. citizen filing a Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services in the United States. The U.S. citizen normally must submit evidence of the relationship with the foreign fiancé(e), including evidence that the two have met in person within the last two years. (This requirement can only be waived if a meeting between the U.S. citizen and foreign fiancé(e) would violate strict and long-established customs, or would create extreme hardship for the U.S. citizen.) In the event that the U.S. citizen met the foreign fiancé(e) through an international dating or matchmaking service, the U.S. citizen would also be required to provide information regarding his or her criminal convictions, if any, which would then be disclosed to the foreign fiancé(e).

Once the Petition for Alien Fiancé(e) is approved, notification will be sent to the National Visa Center and then to a U.S. consulate or embassy abroad, where the fiancé(e) can apply for a K-1 visa.

After obtaining a K-1 visa, the fiancé(e) can travel to the United States. A requirement of the K-1 visa is that the marriage to the U.S. citizen take place within 90 days of the fiancé(e)'s entry to the United States. This 90-day time frame cannot be extended, so to the extent possible, it's important to take into account the fiancé(e) visa petition process in planning the wedding. This can minimize the chance that a couple will face the stressful situation of trying to "move up" a wedding to make sure it is within 90 days of the fiancé(e)'s entry to the United States, or alternatively delaying a wedding if the fiancé(e) cannot obtain a K-1 visa to enter the United States as quickly as anticipated.

Following the foreign fiancé(e)'s arrival in the United States and the marriage, he or she can then file an Application to Adjust Status to Lawful Permanent Resident (Form I-485) in the United States.

The K-3 Spouse Visa

In an alternative scenario, perhaps you are already married to a foreign national who is outside the United States. The marriage might have taken place while your spouse was in the United States in a lawful status and he or she then returned home, or your marriage might have taken place in another

country. In this situation, one option would be for the foreign spouse to obtain a K-3 visa. The K-3 is a nonimmigrant visa that allows the spouse of a U.S. citizen to enter the United States to await the processing of his or her green card.

Obtaining a K-3 visa requires that the U.S. citizen file a Petition for Alien Relative (Form I-130) with U.S. Citizenship and Immigration Services, followed by a Petition for Alien Fiancé(e) (Form I-129F). The I-129F is the same petition described above for the K-1 fiancé(e) visa process, but in this case it applies to the K-3 spouse. If the U.S. citizen met the foreign spouse through an international dating or matchmaking service, the U.S. citizen would also be required to provide information regarding his or her criminal convictions, if any, which would then be disclosed to the foreign spouse.

Once the I-129F petition is approved, notification will be sent to the National Visa Center and then to a U.S. consulate or embassy where the marriage took place (or, if the marriage took place in the United States, to the appropriate embassy or consulate based on the foreign spouse's nationality), where the spouse can then apply for a K-3 visa.

After obtaining a K-3 visa, the foreign spouse can travel to the United States, be admitted for a two-year period, and can file an Application to Adjust Status to Permanent Resident (Form I-485) after arriving in the United States. He or she can also obtain employment authorization by making a separate application for an Employment Authorization Document.

Consular Processing for an Immigrant Visa, or Adjustment of Status in the United States

If you are already married and your spouse is abroad, it is also possible for him or her to do all of the processing for a green card outside the United States. In this situation, the U.S. citizen will normally file the Petition for Alien Relative (Form I-130) with U.S. Citizenship and Immigration Services. Once the petition is approved, notification will be sent to the National Visa Center and then to the consulate or embassy outside the United States where the foreign spouse will apply for an immigrant visa. The benefit of this option is that the foreign spouse would be able to enter the United States as a green card holder, and would not need to file an application to adjust his or her status after arriving in the United States. The drawback, however, is that instead of awaiting the processing of the green card application while in the United States, the foreign spouse would not be able to enter the United States until all of the processing is completed.

Finally, if your fiancé(e) or spouse is already in the United States in a lawful status – such as on a work or student visa – it may be possible to file the Petition for Alien Relative (Form I-130) and the spouse's Application to Adjust Status to Permanent Resident (Form I-485) together with U.S. Citizenship and Immigration Services after the marriage takes place. With Adjustment of Status, the immigration law provides a bit more leeway if the foreign spouse has unwittingly fallen out of immigration status or worked without permission. Some missteps can be forgiven; others create real immigration problems. So it's best to consult with an experienced immigration lawyer who can review all of the facts, including the couple's marriage and travel plans, and offer a choice of legitimate options.

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Obtaining a green card for a foreign citizen is a complex process, even when he or she is married (or plans to get married) to a U.S. citizen. Unfortunately, it is all too common for immigration cases to be delayed and the couple kept apart if specific procedures are not carefully followed at each step along the way, or if incomplete information or documentation is submitted. Love and marriage are too important to leave the immigration process to chance or to a do-it-yourself, high-risk procedure. Most couples can avoid difficult and frustrating immigration challenges at a time when they should be celebrating a happy occasion. Navigating the perplexing immigration maze for a foreign fiancé(e) or spouse is not an area for self-help processing. This is why it is extremely important to have the assistance and guidance of an experienced immigration attorney throughout the process.