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OBTAINING PERMANENT RESIDENCE THROUGH MARRIAGE

Many persons inquire as to the method of obtaining permanent residence through marriage to a US citizen. The process is still one of the easiest of all the methods of obtaining status here; however there are careful procedures within the Immigration system to make sure that applications for permanent residence are based upon marriages which are valid, legitimate and genuine.

Under present law, a person who came to this country on a valid visa can apply for permanent residency if they marry a US citizen. If the person came to the US on a fiancee visa, they must marry within 90 days to the person who sponsored their visa in order to qualify for adjustment of status to permanent residence in this country. All other persons can apply for adjustment of status to permanent resident in this country based upon marriage to a U.S. citizen, as long as they entered the United States on a valid visa and have not committed a crime or some other act which makes them ineligible.

An application for permanent residence based upon marriage to a U.S. citizen is made by the submission of BCIS Form I-485 "Application for Adjustment of Status" to the Bureau of Citizenship and Immigration Services of the Department of Homeland Security. There are many necessary forms and documents necessary to submit with the I-485, including photos, birth and marriage records and other immigration forms. It generally takes approximately six months to one year to finish the adjustment of status process. There is an interview at the end of the application process, which both spouses must attend.

In order to prove that the marriage is valid at the interview, it is necessary to provide certain documentation. This includes financial records such as leases with both spouses names, joint bank account statements, joint credit cards, utility bills and other evidence that the couple is living together. It is also helpful to bring photographs of the couple together, including photos of the wedding. Other personal documents such as correspondence before marriage or even personal mementoes can be helpful to show the immigration officer.

The interviews generally last approximately one hour or less and are intended to determine whether the marriage is legitimate or not. Applicants are usually asks questions about the manner in which they met, their hobbies and personal lifestyle, and their finances. If there is any significant doubt about whether the marriage is real, the applicants are required to come for a second, more intensive interview. In these second interviews, the spouses are separated and questioned at greater length by trained officers. These second interviews sometimes last several hours.

If the officer is satisfied the marriage is bona fide, and all other requirements for permanent residence are met, the adjustment of status application is approved. If the marriage is less than two years old, the immigrant is given *conditional* permanent residence. This status gives the immigrant all the same rights as a permanent resident except that it expires after 24 months.

Two years after the granting of conditional permanent residence, a new application must be submitted to the immigration service, documenting that the marriage still exists. Generally, there is no interview with this application, however the Service does select a certain portion of applicants to be called in for another interview.

As stated above, because all marriages must be genuine in order to qualify the alien for permanent residence, I would *strongly* discourage anyone from filing an application based upon marriage where there was any intent to file for a divorce in the future. In the event a divorce occurs after the filing of the application but before the application for conditional permanent residence is granted, the application will be denied and the alien may be put in deportation proceedings. If, due to completely unforeseen circumstances, a divorce occurs after the filing of the application and after the application is granted, but before the two year period passes and final permanent residence is granted, then the alien must apply for a waiver of the two year marriage requirement. A divorce coming after the granting of permanent residence would not effect the alien's status unless the Immigration Service reviewed the matter and concluded the marriage was fraudulent.

Any permanent resident must wait five years to apply for citizenship, unless they obtained permanent residency through marriage, in which case the waiting period is three years. If a divorce occurs after the granting of permanent residence but before citizenship, the alien must wait five years for citizenship.

In some cases, being in this country illegally for any period of time can cause a person to be ineligible; for example, if they entered the U.S. without a visa or they left this country after a period of unlawful presence in the U.S. There are also certain crimes or other conduct which make a person ineligible for permanent residence or citizenship.

I recommend that, before one files a specific application for permanent residence, he or she should retain an immigration lawyer and discuss all the facts of the case. There may be relevant facts that would affect the outcome that should be discussed with a lawyer before any filing. Even though marriage to a U.S. citizen is still a basis for obtaining a green card in many cases, one must also be careful that submitting an application to the government does not end up as the first step towards a deportation proceeding.

CHRISTOPHER A. KEROSKY of the law firm of KEROSKY & ASSOCIATES has practiced law since 1984 and has handled over 1000 immigration cases. He graduated from University of California, Berkeley Law School and was a former counsel for the U.S. Department of Justice in Washington D.C. His offices are in San Francisco, San Jose and Sacramento. His website is: www.youradvocate.net or www.tvoiadvokat.com . His office can be reached at **(415) 777-4445 (San Francisco), (916) 349-2900 (Sacramento) or (408) 993-0233 (San Jose)**