

Rules for Petitioning Alien Spouses

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For immigration purposes, the term "spouse" may not be as clear as it appears to be. There are gray areas for which a US citizen or a permanent resident might encounter in the course of petitioning his or her spouse. In this case, one must take note of certain considerations as outlined by the INS.

The rules are many but these can be reduced to three specific guidelines: First, that the marriage must be valid at the time it was performed; Second, that the marriage is still in existence; and third, that the marriage is not fraudulent in that it should not have been entered into for the purpose of obtaining a permanent resident status for the alien.

A marriage being valid means that each party is legally of age when the marriage was entered, and that the ceremony be recognized as valid in the place or country it was performed. Local customs vary from one country to another. If they are valid in the country of marriage, it may be considered valid by the INS, but then others may not be so. Common law marriages, tribal or custom marriages, custom divorces and other marriage or divorce practices not particularly recognized in the US, may be subject to some problems in the INS.

A marriage being valid also means that prior divorces should also have been valid before the present marriage was entered. Divorces where one of the parties was not present in the country of divorce may raise some questions, but in some such cases, when such practice is accepted in the country of divorce, the INS may eventually consider the case favorably but it is important here that the case be argued sufficiently. Where neither party was present in the country or US jurisdiction where the divorce occurred, one can almost be certain that the divorce will not be considered valid by the INS.

A marriage to still be in existence is clear enough. If, however, the couple no longer live together and have informally separated, the marriage may yet be considered still in existence. But they should be on guard for it is natural that questions should be raised as to their intentions to come together for immigration purposes alone. Counsel is clearly advisable in this case.

It is certainly more an exception than a rule that couples who have met only a few times decide to get married. In short notice, the ceremony is performed. The marriage, valid or not, will naturally arouse suspicion where immigration officials are concerned and questions will be asked. The basis of their inquiry will arise from any one of these circumstances: that the couple has known each other for only a short time, that they have only seen each other a few times before their marriage, and that they do not live together or have never resided together.

Furthermore, it will be even more difficult to prove that a marriage was entered in good faith once deportation proceedings have been initiated on the alien, or when an immigrant petitioner, whose permanent resident status has been accorded to him based on a prior marriage, files for a spousal visa petition. And without a common language or shared cultural affinities between the spouses, they can be sure they will need a checklist of reasons to justify their union before an immigration officer. All these situations will deserve further investigations by the INS and where problems are sure to arise, legal assistance may be a wise recourse.

Alien spouses are granted permanent residence on a conditional basis and will remain valid if they remain married within two years prior to their being granted a permanent residence. The condition is removed by filing jointly Form I-751 petition during a 90-day period immediately preceding the two-year anniversary of the permanent residence.

When the petitioning (citizen) spouse dies under some circumstances, the alien widow or widower can file an immediate relative visa petition within two years of the citizen spouse's death, and must remain unmarried at that time. These are among the pertinent considerations for the widowed alien: marriage to a US citizen for at least two years, the petition must have been filed within two years of the citizen spouse's death or before November 29, 1992 (if the death occurred before November 29, 1990), that they were not legally separated at the time of citizen's death, and, as mentioned above, that the alien spouse has not remarried.