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Removal of Conditional Status for Alien Spouses

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Certain aliens who marry US citizens or permanent residents are granted conditional permanent residence status. This means that the status is terminated upon the happening of certain events within two years.

These aliens however are allowed benefits as are usually accorded to full permanent residents such as permission to work in the US, privilege to travel freely in and out of the country, and the benefit of counting the years as a conditional resident toward the time requirement for naturalization.

Only the following aliens are subject to this conditional permanent resident status: alien spouses who apply for permanent residence as an immediate relative based on a marriage to a US citizen, or as a 2nd preference beneficiary based on a marriage to an alien, and the marriage took place within two years prior to the granting of permanent residence.

Permanent residence is accorded either on the date when an adjustment of status is finally approved, or upon the alien's entry to the US with an immigrant visa issued at a US Consulate. The following scenarios illustrate when an alien spouse is subject to a conditional status:

1. An alien marries a US citizen. The spouse's immediate relative petition is filed together with the alien's adjustment of status application. Eight months after the filing, an interview is held and permanent residence is granted. This subjects the alien spouse to a conditional status.
2. A US permanent resident marries an alien and files a petition for him or her. This classifies the alien under the family-based Second Preference. The petition is approved after three months, but the couple still has to wait for at least three years for a visa number. When the visa number becomes available, it takes about eight months to process the alien's immigrant visa application. By then, the couple would have been married for at least two years. Therefore the alien spouse will be given a permanent resident status without a condition.

The conditional status accorded to alien spouses may be terminated within two years from the time they were given permanent residence if: 1). the marriage is judicially annulled or terminated; or 2). the marriage was entered into just for the purpose of obtaining alien's immigrant visa; or 3). a fee or some other considerations were paid, other than attorney's fee, for the filing of the petition; or 4). the alien fails to file an application to remove the conditional status within the 90 day period preceding the second year anniversary of the granting of that conditional residence.

It is important that the required application to remove the conditional status be filed. Husband and wife must jointly file INS Form I-751 with the INS requesting for the removal of the conditional status.

When permanent residence has been terminated because of the failure to file a removal, the INS may excuse said failure if the termination of marriage was due to a divorce or annulment and the alien spouse can show that his or her deportation will cause extreme hardship to him or her, or that he or she entered the marriage in good faith, but for one reason or the other, he or she was not at fault in failing to file the joint petition, or that the alien spouse was battered or subjected to extreme cruelty by the other.