

# Removal of Conditional Residence

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When an alien marries an American citizen or permanent resident, he/she is given a conditional permanent resident status. This was intended to discourage fraudulent marriages entered into for the purpose of acquiring a green card. The spouses must file for the removal of the conditional status 90 days before their second anniversary. If they are still married and both are willing to sign the form, the spouses can file a joint petition. The couple has to prove that their marriage was genuine by presenting supporting documents such as evidence of the wedding, joint ownership of property, birth certificate of children, insurance policies, tax forms, bank statements etc. The alien and the American spouse may have to appear for an interview at the Immigration office where they may present additional documents proving their bona fide marriage. If the marriage is proven to be genuine, the petition will be approved and the conditional basis will be removed. If after the removal of the conditional status the INS determines that fraud is committed, the INS can still institute deportation proceedings.

If before the second anniversary the parties are no longer married or are unwilling to sign the form jointly, the alien spouse may file for the removal of the conditional basis. The alien spouse can do this if he can prove any one of the following conditions:

1. Extreme hardship if deported.

This ground could be used especially when the marriage is questionable or clearly fraudulent. The concept of extreme hardship is difficult to prove however. Extreme hardship can be to the alien, his child, or his next spouse if any. Financial difficulties and pain from separation of family are not sufficient to prove extreme hardship. Other factors such as condition in home country, age and health of applicant and relatives, community ties and other factors may be taken into consideration when proving extreme hardship.

2. The marriage was entered into in good faith but is now legally terminated through divorce or annulment.

The alien spouse must provide proof that the marriage was bona fide at inception. Both parties intended to establish a life together and were committed to the marriage but unfortunately it didn't work out. Proof of this may be the birth certificate of children born to the marriage, documents showing commingling of financial assets, joint ownership of property, leases showing joint tenancy of a common residence etc.

3. The marriage was entered into in good faith but during the marriage the alien was battered by or subject to extreme cruelty by the spouse.

The marriage in this case does not have to be terminated, but the alien spouse must provide proof that it is a bona fide marriage. She must also provide proof of physical or mental abuse committed during the marriage. Act or threatened act of violence, forceful detention which could result to physical or mental injury, psychological or sexual abuse, including rape, molestation or forced prostitution are examples of abuse. In the case of extreme mental cruelty, the INS will require professional evaluation from a recognized professional. Reliable witnesses who could also help confirm the abuse the existence of abuse.

If the waiver is denied, the conditional status will be terminated and the alien spouse will be deported. There is no appeal.