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## Policy Alert

SUBJECT: Family-Based Immigration: Spousal Petitions

### Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing guidance in the [USCIS Policy Manual](#) on qualifying spousal relationships for purposes of family-based immigrant visa petitions under the Immigration and Nationality Act (INA).

### Background

The INA provides that U.S. citizens, U.S. nationals,<sup>1</sup> and lawful permanent residents (LPRs) may petition for certain alien spouses to immigrate to the United States.<sup>2</sup> Spouses of U.S. citizens may be classified as immediate relatives,<sup>3</sup> and spouses of LPRs may be classified in a preference category for immigrant visa issuance.<sup>4</sup>

USCIS must ensure that marriages are between two people who are legally willing and able to marry and that marriages are legally valid, bona fide, and consistent with the laws and public policy of the United States. USCIS will review the marriage bona fides of each spousal relationship at the time the immigrant visa petition is adjudicated and at the time the adjustment of status application is adjudicated. This guidance will enhance USCIS' capabilities to identify marriage-based fraud in the initial stages of the immigration process.

This guidance, contained in Volume 6 of the USCIS Policy Manual, is effective immediately and applies to petitions pending or filed on or after the publication date. This policy update supersedes the guidance found in Chapter 21.3 of the Adjudicator's Field Manual (AFM), related AFM appendices, and related policy memoranda. The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance.

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<sup>1</sup> See [INA 308](#). U.S. nationals are not citizens of the United States, but they are afforded the same rights as lawful permanent residents to file a family-based immigration petition for certain alien relatives. See [Matter of Ah San](#), 15 I&N Dec. 315 (BIA 1975) (holding that U.S. nationals who are not citizens of the United States may also file petitions under [INA 203\(a\)\(2\)](#)).

<sup>2</sup> In addition, Congress provided that certain relatives may self-petition in limited circumstances.

<sup>3</sup> See [INA 201\(b\)\(2\)\(A\)\(i\)](#).

<sup>4</sup> See [INA 203\(a\)](#). The term preference is used in immigration law to refer to numerically limited family-based and employment-based priority categories for immigration and LPR status.

## **Policy Highlights**

- Defines spouse and the types of marriages that may be recognized under U.S. immigration laws and provides guidance on certain marriages, including marriages involving minors, marriages that violate public policy, and proxy marriages.
- Provides that a virtual marriage is subject to the same requirements, including the place of celebration rule, as all spousal cases, regardless of state-specific provisions on virtual marriages.
- Provides that same-sex marriages are subject to the same requirements, including the place of celebration rule, as all spousal cases.
- Incorporates existing guidance on general eligibility criteria, filing and documentation requirements, and how USCIS adjudicates spousal immigrant petitions, including when an interview may be appropriate.
- Provides that petitioners must demonstrate that a marriage is bona fide prior to petition approval to enhance fraud screening and ensure benefit integrity.
- Explains the statutory bar to petition approval where the alien previously entered into, or attempted or conspired to enter into, a marriage for the purpose of evading immigration laws.
- Provides that certain aliens who file frivolous asylum applications are permanently ineligible for immigration benefits.

## **Summary of Changes**

Affected Section: Volume 6 > Part B > Family-Based Immigrants

- Adds content to previously reserved Chapter 6 (Spouses).

USCIS may also make other minor technical, stylistic, and conforming changes consistent with this update.

## **Citation**

Volume 6: Immigrants, Part B, Family-Based Immigrants, Chapter 6, Spouses [[6 USCIS-PM B.6](#)].