Chapter 6 - Spouses

Guidance Resources (11) Appendices (0) Updates (5)

The Immigration and Nationality Act (INA) permits U.S. citizens, U.S. nationals,[1] and lawful permanent residents (LPRs) to petition for qualifying spouses to immigrate to the United States.[2]

In its adjudication of immigrant visa spousal petitions, 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.

A. Definition of Spouse and Types of Marriages for Family-Based Immigration Purposes

A qualifying spousal relationship for immigration purposes includes marriages that:

- Are legally valid in the place of celebration;
- Are consistent with the public policy of the United States;
- Are bona fide or entered into in good faith;[3] and
- Demonstrate the parties to the marriage were legally free and able to marry.

1. Definition of Spouse

The term spouse generally refers to one of two persons who are recognized as married to each other under the laws of the location where the marriage took place, commonly called the place-of-celebration rule.[4] In addition to the qualifying relationship requirements listed above, under the INA, a person only qualifies as a spouse if both parties to the marriage were present during the marriage ceremony, or the parties consummated the marriage following the ceremony if they were not present together.[5]

2. Types of Marriage

USCIS recognizes several types of marriages, which are discussed below, for immigration purposes if valid under the laws of the place of celebration.

Civil Marriage

A civil marriage refers to a marriage that is observed as a civil contract.[6] Although the ceremony may include religious or traditional aspects, a civil marriage requires that a civil authority formally recognized the marriage. A civil authority generally issues evidence of the marriage in the form of a marriage certificate.

Common Law Marriage

A common law marriage refers to a marriage that takes effect in certain jurisdictions without a license or ceremony, when two people who are free and able to marry live together as spouses, intend to be married, and hold themselves out to others as a married couple.[7]

A common law marriage may be valid for immigration purposes if it is valid where [illegible] on law marriages generally do not require any civil action to formalize the marriage.

recognizes common law marriages may have different requirements for its recognition of such a marriage. For example, a jurisdiction may recognize a common law marriage if the parties:

- Live together;
- Present themselves to others as married, for example, by sharing a last name, referring to each other as husband and wife, or filing a joint tax return; and
- Intend to be married.

If the parties live in a jurisdiction which recognizes common law marriage, and the parties meet the qualifications for common law marriage for that jurisdiction, then their common law marriage may be valid for immigration purposes.[8] Even if a common law marriage is otherwise valid for immigration purposes, the state in which the petitioner and alien beneficiary currently reside or intend to reside may not recognize a common law marriage which was entered into in another jurisdiction.[9]

The validity of a common law marriage is generally a fact specific determination. Some examples of evidence that the parties may submit to show they have met the requirements to be in a common law marriage in a specific jurisdiction may include, but are not limited to:

- An affidavit[10] of marriage or affidavits from third parties confirming the marriage;
- Documents demonstrating a marital partnership, such as income tax returns, mortgages, joint utility bills, or leases; or
- A religious marriage certificate.

Customary Marriage

A customary marriage refers to a marriage made in accordance with customary law or traditional practice rather than under civil authority.

Some countries recognize customary or traditional law as having jurisdiction over certain domestic issues including marriage and divorce.[11] Where customary law exists, civil authorities in that country may have a role in affirming a customary marriage. In these cases, the petitioner should provide a civil court decree or other evidence of the civil authority's agreement.[12] However, civil authorities in the place of celebration may consider these marriages to be valid even if the marriages are not certified by the civil authority.

In addition to reviewing whether there is evidence of the civil authority's agreement, USCIS may look at cultural norms, traditional practices, religious belief systems, and whether local communities recognize these marriages to help determine whether a customary marriage is valid in the place of celebration.[13]

Same Sex Marriages

Same-sex marriage is a lawful basis for all family-based immigration benefits.[14] In order to be valid for immigration purposes, a same-sex marriage must meet the same requirements as an opposite-sex marriage.[15] If a same-sex marriage is not recognized as a valid marriage in the place of celebration, it is not a valid marriage for immigration purposes. A same-sex marriage that is legally valid in the jurisdiction where it was celebrated is valid for immigration purposes, even if the jurisdiction in which the parties reside does not recognize same-sex marriage, unless the marriage falls within an exception.[16]

B. Eligibility for Spouses

The petitioner has the burden to establish that the marriage to the alien beneficiary meets the requisite criteria for immigration purposes.

1. Legal Validity of Marriage

Generally, USCIS recognizes a marriage as valid for immigration purposes if it is legally valid in the place where the marriage is celebrated.[17] Although states and foreign countries may have specific laws governing jurisdiction over a marriage, the place of celebration is generally where the ceremony takes place or where the marriage certificate is issued.[18] Even if valid in the place of celebration, there are circumstances where USCIS may still not recognize a marriage as valid for immigration purposes.

Examples of the types of relationships that USCIS generally does not recognize as marriages for immigration purposes include:

- Civil unions, domestic partnerships, or other relationships not recognized as marriages in the place of celebration;

- Marriages that are not consistent with public policy in the United States, which includes polygamous marriages and may include marriages involving certain minors or close relatives;
- Marriages where one party is not present during the marriage ceremony (proxy marriages) unless the parties later consummate the marriage;
- Marriages where one or both parties to the marriage are not legally free to marry or have not given consent to the marriage; or
- Marriages entered into for the purpose of evading immigration laws of the United States.

2. Marriages Not Consistent with Public Policy

Even if a marriage is considered valid in the place of celebration, a marriage may not be consistent with the public policy of the United States or the state in which the couple resides and, therefore, may not be valid for U.S. immigration purposes.[19] For example, if a marriage was lawfully entered into in the place where it was celebrated but the couple now lives or will live in a different place, USCIS must determine whether the marriage is or will be recognized as valid in the petitioner's current or identified intended state of residence.[20] If the alien beneficiary resides abroad, unless otherwise indicated, USCIS presumes that the couple will reside in the petitioner's state of residence.[21]

In such cases, officers must issue a Request for Evidence (RFE) for the petitioner to establish whether the marriage is or will be recognized as valid in the petitioner's current or presumed state of residence.[22]

Officers must look at the state's criminal and civil statutes to determine whether the marriage is consistent with the state's public policy. The assessment as to whether a marriage violates state public policy is a case-by-case determination and involves the facts surrounding the parties, the marriage, and U.S. state law.

Examples of marriages that may violate public policy are discussed below.

Polygamy

Polygamy is the practice of having more than one spouse at the same time. The United States does not consider polygamous marriages as valid.[23] Therefore, USCIS does not recognize polygamous marriage for immigration purposes even if valid in the place of celebration.

The first legally valid marriage in a polygamous marriage situation is the only relationship that USCIS recognizes as valid for immigration purposes.[24]

Marriage Between Close Relatives

Some foreign countries and some states in the United States permit marriages between close relatives under certain circumstances.[25] USCIS recognizes these marriages for immigration purposes, generally, if they are consistent with the laws or public policy of the state where the parties reside or intend to reside. The fact that the couple could not have married in the state of residence does not necessarily mean that the marriage is contrary to public policy of the state.

In determining whether a marriage between close relatives is contrary to the public policy of the state of residence, USCIS assesses whether the state of residence would refuse to recognize the marriage or would prosecute conduct related to the marriage.[26]

Marriage Involving Minors

While there are no statutory minimum age requirements for the petitioner or alien beneficiary of a spousal immigration petition, marriages involving a minor warrant special consideration because of the minor's possible vulnerabilities. At minimum, USCIS evaluates whether the ages of the parties at the time of marriage violate the law of the place of celebration or violate the law or public policy of the state where the couple reside or intend to reside. While marriages involving a minor are not allowed in some states, some states and some foreign countries permit marriage involving one or more minors.[27]

Some circumstances where certain states or foreign countries permit marriages involving minors include marriages where:

- There is parental consent;
- There is a judicial order;
- The minor or minors are emancipated; or
- The minor is pregnant.[28]

The existence of one of these factors does not equate to a finding that a marriage involving a minor is valid for immigration purposes. USCIS evaluates each marriage on a case-by-case basis considering the law of the place of celebration and place of residence of the parties.

If the place of celebration does not allow minors to marry unless certain circumstances apply, USCIS issues an RFE and requests evidence of those circumstances and that the couple has met the requirements under relevant state or foreign laws, if applicable.[29] Evidence that the couple meets an exception under state or foreign law that permits them to legally marry may include, but is not limited to:

- A court order demonstrating legal emancipation of the minor;
- A written statement of a licensed physician, licensed physician's assistant, or nurse practitioner confirming a pregnancy;
- Documented parental consent, as required by state or foreign law;
- A judicial decree; and
- Any other evidence the state or foreign country requires.

If a jurisdiction recognizes a marriage involving a minor as valid, USCIS further evaluates the marriage for evidence that:

- The marriage was lawful in the place of celebration on the date it was celebrated;[30]
- The marriage is consistent with the public policy of the United States or the state where the couple resides, or will reside, and that the state would recognize the marriage;
- The marriage is bona fide; and
- The minors provided full, free, and informed consent to enter into the marriage.

As with marriages between close relatives, the fact that the couple could not have married in the state of residence does not necessarily mean that the marriage is contrary to public policy of the state. Even though a particular state may prohibit a marriage involving minors, that state might still choose to recognize the marriage if it took place in another jurisdiction.[31]

In determining whether a marriage involving one or more minors is contrary to the public policy of the state of residence, USCIS assesses whether the state of residence would refuse to recognize the marriage or would prosecute conduct related to the marriage.[32]

As with any marriage, USCIS also considers whether the marriage is bona fide and not entered into for the primary purpose of evading immigration law.[33] Marriages involving minors may raise questions as to the consent of the parties. Generally, an officer may rely upon a marriage certificate, court decree, or parental consent as probative evidence of a minor's consent. However, if the case presents questions as to the full, free consent of both parties, the officer should consult with supervisors and local USCIS counsel to help determine whether there is a disclosure of forced marriage.[34]

USCIS has the authority to interview any petitioner or alien beneficiary, including a minor.[35] To better examine the eligibility of the marriage for immigration purposes, officers must refer the following Petition for Alien Relative (Form I-130) spousal petitions for interview:

- All Form I-130 spousal petitions in which the petitioner or the alien beneficiary is less than 16 years of age when the marriage took place; or
- All Form I-130 spousal petitions in which the petitioner or the alien beneficiary is 16 or 17 years of age and there were at least 10 years difference between the ages of the spouses when the marriage took place.

Generally, officers should ask the same types of questions they would in any other spousal petition case to evaluate the relationship for immigration purposes, while remaining aware of the unique nature of interviewing minors.

While there is no minimum age requirement to file or be a beneficiary to a Form I-130 spousal petition, any sponsor executing an Affidavit of Support Under Section 213A of the INA (Form I-864) (including the Form I-130 petitioner, any joint sponsor, or a substitute sponsor) must be at least 18 years of age at the time the sponsor signs Form I-864. The Form I-864 must generally be submitted with the alien beneficiary's Form I-485.[36] Therefore, if a petitioner is under the age of 18 and submits a Form I-864, USCIS must deny the alien beneficiary's adjustment of status application.

3. Bona Fide Marriages

In addition to demonstrating that the marriage is legally valid, a petitioner must also show that the marriage with the alien beneficiary was bona fide at the beginning of the marriage, which means the petitioner must show that the marriage was entered into in good faith and not for the purpose of evading immigration laws, and that the spouses intended to build a life together at the time they were married.[37]

A marriage that complies with all the formal requirements of the law, but where the parties entered into the marriage with no good faith intent to live together as spouses and intended to circumvent immigrations laws, is not a bona fide marriage.[38] USCIS does not recognize marriages that do not meet the requirements of being bona fide as valid for immigration purposes.[39]

Good Faith Intent

Apart from whether the marriage was entered into for immigration purposes, USCIS generally does not evaluate specific motives for entering into a marital relationship.[40] In determining whether a marriage is bona fide, USCIS looks to the subjective good faith intent of the couple to establish a lasting relationship at the inception of the marriage. When determining whether a marriage is bona fide, the viability of the marriage or the probability of the parties remaining married for a long time is not relevant.[41] Even if the petitioner and the alien beneficiary appear to not have a viable marriage, USCIS may approve the petition if the marriage was valid at the beginning and the parties did not enter into it primarily for immigration purposes.

Withdrawal and Subsequent Re-Filing of Spousal Petition by Same Petitioner and Beneficiary

Failure to demonstrate a bona fide marriage does not, by itself, mean that the marriage is fraudulent. However, if the petitioner withdraws a spousal petition based on an admission by one party that he or she entered the marriage primarily for immigration purposes, any subsequent spousal petition involving the same petitioner and alien beneficiary must include at the time of filing:[42]

- An explanation of the prior withdrawal; and
- Evidence supporting the bona fides of the parties' relationship.

The petitioner has a heavy burden to establish the bona fides of the marital relationship in these cases.[43]

4. Legally Free to Marry

The petitioner must establish that both the petitioner and the alien beneficiary were legally free to marry one another.[44] A bona fide intent to enter into a valid marital relationship is not enough if one or both parties were not legally free or able to marry.

If either party was previously married, the petitioner must demonstrate that the prior marriage was legally terminated, leaving both parties free to marry. If there is evidence that either the petitioner or the alien beneficiary was not free to marry based on a prior marriage to another party, but the petitioner did not submit any evidence of marriage termination, USCIS issues a Notice of Intent to Deny (NOID) to inform the petitioner of this deficiency.

In some jurisdictions, a marriage that is void because one party is still married may become valid once the party terminates the prior marriage.[45] If a marriage occurred before the final date of termination of a prior marriage, USCIS looks to the laws of the place where the parties celebrated the subsequent marriage. If there is no evidence that the applicable law would allow the subsequent marriage to become valid once the party terminates the prior marriage, USCIS issues a NOID for the petitioner to establish that the marriage is valid.

Divorce

The effect of a judicial divorce is to terminate a marriage. The court with jurisdiction over divorce proceedings issues the final divorce decree which typically is final as of the date the court enters the decree. If a divorce decree requires a waiting or revocable period, the decree is not final until that period ends. Some jurisdictions may issue interlocutory divorce decrees or decrees nisi which require a specified period to pass or condition to be met prior to becoming final. These orders are not acceptable evidence of final dissolution or termination of marriage. Both only become final after the specified waiting period or condition is met, such as no new evidence or new petitions related to the case being introduced within the specific time.[46]

In all cases, the divorce must be final to terminate the marriage. If the divorce is not final under the law in the jurisdiction where the divorce decree was issued, a subsequent marriage is not valid for immigration purposes.[47]

USCIS determines the validity of a divorce by first examining whether the state or country that granted the divorce had jurisdiction over the divorce proceeding.[48] USCIS also determines whether the parties followed

the proper legal formalities required by the state or country where the parties obtained the divorce.[49] USCIS generally recognizes a foreign divorce when the country granting the divorce has jurisdiction to grant the divorce on the basis of comity, if both parties had notice of the divorce proceeding and an opportunity to be heard within the proceedings, and the proceedings complied with basic due process guarantees.[50]

When a foreign divorce occurs before a later marriage in the United States, USCIS must verify that the foreign divorce is recognized in the jurisdiction of the later marriage.[51] Foreign divorce laws may allow for jurisdiction even when the parties are not residing in the country. However, some states may not recognize the validity of a foreign divorce unless at least one of the parties to the divorce was domiciled in the jurisdiction granting the divorce.[52]

When there was no later marriage in the United States and the parties were not physically present together or domiciled in the jurisdiction granting the divorce, USCIS may deem a foreign proxy divorce (where one of the parties to the divorce was not physically present during the proceedings) to be valid if both parties were citizens of the country granting the divorce, were married and lived as spouses in the jurisdiction where divorced, had notice of the proceeding, and either one of the parties appeared in court or consented to personal jurisdiction.[53]

If an alien beneficiary or petitioner is divorced but carries on an appearance of a marital relationship with the former spouse, the divorce may not be sufficient to establish that the alien beneficiary or petitioner is free to marry.[54] When determining whether a divorce was not bona fide and done primarily for the purpose of obtaining immigration benefits, factors that USCIS considers may include, but are not limited to, the party and former spouse:

- Continuing to reside together;
- Owning joint property;
- Sharing assets or personal funds, such as through a joint bank account; or
- Filing joint tax returns.

If a lawful permanent resident petitioner and alien beneficiary residing in the United States were previously married, divorced, and then remarried shortly after the petitioner entered the United States on an immigrant visa or adjusted status, officers should review the case thoroughly to determine whether the parties intended to enter into a bona fide marriage and conduct an interview as appropriate.

Customary Divorce

USCIS may recognize a customary divorce if it complies with the marriage and divorce laws of the jurisdiction in which it takes place. However, if the customary divorce is initiated in a jurisdiction other than where the custom is practiced, that jurisdiction may not recognize the foreign customary divorce.[55]

Primary evidence of customary divorce is a court order. However, if the foreign jurisdiction does not require that a court grant or confirm a customary divorce, the petitioner may prove the validity of a customary divorce by establishing: the tribe or group to which the parties belong; the customary divorce law of that tribe or group; and the fact that the required ceremonial procedures were actually followed.[56]

To establish the relevant customary law, the petitioner may submit evidence from reported cases, legal treatises and commentaries, depositions from legal scholars, or advisory opinions from organizations traditionally recognized as possessing knowledge of customary law. If proceeding by way of affidavit, any such affidavits asserting that the pertinent ceremonial procedures were actually followed should be specific and include:

- The full names and birth dates of the parties;
- The date of the customary marriage;
- The date of, and grounds for, the dissolution of marriage;
- The names, birth dates of, and custody agreement for any children born of the marriage; and
- A description of the tribal formalities that were observed, including the names of the tribal leaders, the name of the tribe, the place, the type of divorce, and any other relevant information.[57]

Under current regulation, if submitting affidavits the petitioner must submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition and who have direct personal knowledge of the event and circumstances.[58]

Annulment

The result of annulment is to declare a marriage null and void from its inception.[59] As with divorces, the state or country issuing an annulment must have had jurisdiction over the proceeding. A court's jurisdiction to grant an annulment is usually set forth in the various divorce statutes and generally requires residence or domicile of the parties in that jurisdiction. Court orders or decree documents are issued when a marriage has been annulled by a court with appropriate jurisdiction.

If a marriage was annulled, and therefore invalid from its inception, USCIS may consider the annulment to be retroactive for immigration purposes, even if the marriage was legal in the place of celebration. However, if a prior marriage was annulled, the annulment does not have a retroactive effect to make the subsequent marriage valid in cases where the person sought an immigration benefit through concealment of the prior marriage.[60]

Legal Separation

A legal separation is a formal process by which a judicial decree alters the rights of a married couple without terminating the marital relationship.[61]

The jurisdiction where the legal separation occurs may issue a judicial order of legal separation. However, an order of legal separation is not sufficient evidence that the marriage was fully or legally dissolved. Spouses may also separate without obtaining a judicial order altering the marital relationship or formalizing the separation. Informally separated spouses are similarly also not free to remarry.

5. Additional Considerations for a Qualifying Marriage for Immigration Purposes

In addition to the requirements discussed above for a qualifying marriage for immigration purposes, USCIS considers other issues that may be relevant to the qualifying spousal relationship.

Proxy Marriages

A proxy marriage occurs where the contracting parties are not physically in the presence of each other at the marriage ceremony.[62] These marriages are only valid for immigration purposes if the parties consummate the marriage after the ceremony.[63] Acceptable evidence that the parties consummated a proxy marriage includes but is not limited to:

- The birth certificate of a child born to the couple, and listing both parents on the certificate, after the ceremony took place;
- Passport or airline tickets showing that the petitioner and alien beneficiary were in the same place at the same time subsequent to the marriage ceremony; or
- Evidence of residence together after the ceremony took place such as a joint lease or signed witness affidavits.

Virtual Marriages

A virtual marriage is one that takes place remotely, usually through electronic media technology.[64] The parties to the marriage may or may not be physically present together and are generally physically located in a place other than where the officiant to the ceremony is located.

The laws of the place of celebration govern the validity of the marriage.[65] Each jurisdiction's civil authorities set their own requirements for authorizing a marriage, including any requirements regarding the location of the parties and the officiant. A virtual marriage is valid for immigration purposes if it is valid in the state or country that issued the marriage certificate, and it does not violate the public policy of the United States or a state where the petitioner resides, or where the couple will reside. For the marriage to be valid for immigration purposes, the parties also must consummate the marriage after the ceremony if the parties were not physically together for the ceremony.[66]

Forced Marriage

USCIS considers a forced marriage to mean a marriage to which one or both parties do not or cannot consent, and in which one or more elements of force, fraud, or coercion is present. USCIS does not consider a marriage in which one or both parties did not consent to the marriage to be valid for immigration purposes. Forced marriages are distinct from arranged marriages, which allow for consent of the parties involved.[67]

Legal Separation of Petitioners and Beneficiaries Before Petition Approval

USCIS denies a spousal petition in instances where the parties enter into a valid marriage but obtain a legal separation before the final adjudication of the petition.[68] If the parties enter into a valid marriage, reside separately, but have not obtained a legal separation, USCIS may not deny the petition merely because the parties live separately since USCIS does not consider the viability of a marriage.[69] However, when determining the intent of the parties at the time of the marriage,[70] the factors USCIS considers if the parties are not living together include:

- The timing of the separation;
- The length of separation; and
- Whether the parties continue to support each other and their children (if any) during the separation.

C. Evidence for Spousal Petitions

1. Required Documentation

As with other relative petitions, petitioners must submit documentation along with their petition to establish that the petitioner is either a U.S. citizen, U.S. national, or LPR, and that the claimed relationship is valid.[71] For spousal petitions, the petitioner must generally demonstrate that the marriage is legally valid, bona fide, and that the petitioner and alien beneficiary were free to marry each other.

In addition, spousal petitions filed after April 28, 2017, require a completed and signed Supplemental Information for Spousal Beneficiary (Form I-130A). USCIS does not require the alien beneficiary's signature if the beneficiary resides overseas. If the alien beneficiary resides in the United States and the Form I-130A does not contain a signature, USCIS issues an RFE.

For petitions filed before April 28, 2017, the petitioner and alien beneficiary must have completed a Biographic Information (Form G-325A). If Form G-325 was erroneously submitted instead of Form G-325A, USCIS may adjudicate the form without issuing an RFE only if there were no prior marriages.

Evidence to support a claimed relationship for spousal petitions includes:

- A marriage certificate;[72]
- Evidence showing that the marriage is bona fide, including but not limited to:
  - Documentation showing joint ownership of property;[73]
  - A lease showing joint tenancy of a common residence;[74]
  - Documentation of commingling of financial resources;[75]
  - Birth certificates of children born to the couple;[76]
  - Affidavits of third parties with personal knowledge of the relationship;[77] and
  - Any other documentation relevant to establishing that the parties did not enter the marriage for the purpose of evading immigration law;[78]
- Evidence of legal termination of all prior marriages[79] (if applicable) including:
  - A final decree of divorce;[80]
  - A final decree of annulment; or
  - A death certificate; and
- Documentation of legal name changes (if applicable).[81]

Additional evidence that the petitioner may be required to submit to support a claimed relationship includes, but is not limited to:

- Evidence that a proxy marriage was consummated after the ceremony, when required;
- Evidence that the marriage is consistent with the public policy of the United States or the state where the couple will reside, when required; and
- Evidence that the parties to the marriage mutually agreed to enter into a marriage relationship.

Marriage Certificate

A valid marriage certificate, timely registered in accordance with the requisite jurisdiction's requirements, from the appropriate civil authority, such as a justice of the peace, judge, or city clerk, is prima facie evidence of the validity of a marriage. A license to marry is insufficient evidence of a marital relationship.

A marriage certificate should include the full names of the parties, include the date the marriage actually occurred, and be timely registered with the appropriate civil authority after the ceremony, or show that it conforms to the legal requirements of the place of celebration. USCIS may require additional evidence to demonstrate the validity of the marriage, that the parties to the marriage were legally free to marry, and that marriage was bona fide, if additional evidence was not already submitted and the initial evidence submitted fails to meet the appropriate burden.

Affidavits in Support of Bona Fides

Third party affidavits that the petitioner submits when primary or secondary evidence does not exist or is unavailable[82] as evidence of a bona fide marriage must contain:[83]

- The full name and address of the person making the affidavit;
- Date and place of birth of the person making the affidavit; and
- Details explaining how the person acquired knowledge of the marriage.

Evidence of Legal Termination of Prior Marriages

The civil authority in the jurisdiction where a marriage is terminated issues documents, such divorce certificates, as evidence of legal termination of the marriage. The petitioner must provide documentation of the termination of each prior marriage.

2. Standard of Proof for Spousal Petitions

Generally, the petitioner must meet the preponderance of the evidence standard of proof for spousal petitions. There are instances, discussed below, where USCIS applies a heightened evidentiary standard based on immigration law and regulation.[84]

D. Adjudication of Spousal Petitions

USCIS generally approves the petition when the petitioner submits sufficient evidence in support of a Form I-130 to establish a legally valid and bona fide marriage.[85] If the petitioner has submitted some evidence with the initial filing, but it is insufficient to establish a legally valid and bona fide marriage, or concerns exist regarding the reliability or credibility of the evidence, USCIS may issue either an RFE or a NOID or conduct an interview.

1. Interviews

USCIS has the authority to interview any petitioner or beneficiary.[86] If the facts of an individual case present a need for an interview, for example, if the facts presented are inconsistent or raise doubt about the bona fides of the marriage,[87] or if the documentary evidence submitted to establish that the marriage is legally valid is insufficient,[88] USCIS will conduct in person interviews with the petitioner, and in some cases the alien beneficiary. In certain cases where USCIS determines that the petitioner and alien beneficiary will both be interviewed, USCIS may interview the petitioner and alien beneficiary separately or together.

In addition to instances where the individual facts of the case warrant an interview, USCIS will also conduct an interview in the following spousal cases:

- One or both spouses were under the age of 15 at the time of the marriage;
- One spouse was 16 or 17 and the other spouse was at least 10 years older at the time of the marriage;
- A heightened evidentiary standard is applied as discussed below;
- The petitioner previously filed a spousal petition for a different beneficiary; or
- An adverse decision or withdrawal request was made on a prior spousal petition involving either the petitioner or alien beneficiary.

2. Heightened Evidentiary Standard for Certain Petitions[89]

The INA generally prohibits USCIS from approving a spousal petition filed[90] by an LPR within 5 years of the date on which the petitioner became an LPR through a prior marriage to a U.S. citizen or LPR.[91] The LPR petitioner can overcome this prohibition if the petitioner:

- Waits 5 years from the date of obtaining status to file the petition;

- Establishes by clear and convincing evidence that the prior marriage was not entered into with the purpose of evading immigration laws; or
- Establishes that the prior marriage ended through death.

The clear and convincing standard is higher than the usual preponderance of the evidence standard for family-based visa petitions. The clear and convincing evidence standard is "that degree of proof, though not necessarily conclusive, which will produce in the mind of the court [or other trier of fact] a firm belief or conviction, or as that degree of proof which is more than a preponderance but less than beyond a reasonable doubt."[92]

If the petitioner falls within this prohibition and has not submitted sufficient evidence, USCIS notifies the petitioner of the deficiency and requests additional evidence. If, after an RFE or a NOID, the petitioner has still not met the clear and convincing evidence burden, USCIS denies the family-based visa petition.

3. Marriage During Removal Proceedings (INA 204(g))

The INA prohibits USCIS from approving a visa petition filed on behalf of an alien spouse if the marriage occurred on or after November 10, 1986, and while the alien beneficiary was in exclusion, deportation, or removal proceedings.[93] The petitioner can overcome this prohibition if eligible for an exemption.[94]

The petitioner has the burden to establish eligibility for an exemption[95] and may do so if the petitioner can establish one of the following:

- An immigration judge determined that the alien beneficiary is not inadmissible or deportable from the United States;
- DHS cancelled the charging document, such as a Notice to Appear (Form I-862) or similar document;
- The proceedings have been terminated by the immigration judge or the Board of Immigration Appeals;
- A federal court has granted a petition for review or an action for habeas corpus;
- At the time of filing, the alien beneficiary has resided outside the United States for 2 or more years following the marriage;[96] or
- There is clear and convincing evidence that the petitioner and alien beneficiary entered into a bona fide marriage in good faith and in accordance with the laws of the place of celebration, and no fee or other consideration was given (other than to an attorney for assistance in preparation of a lawful petition) for the filing of a petition.

To establish eligibility for a bona fide marriage exemption, the petitioner must submit a written request for an exemption along with the Form I-130 for that alien beneficiary.[97] USCIS may also issue an RFE or NOID to request evidence for the exemption if the petitioner does not submit a request as initial evidence. The purpose of the exemption is to establish that the marriage is bona fide and that the petitioner and alien beneficiary entered into the marriage in good faith and not for the purpose of evading immigration law. The request for an exemption must state the reason for seeking the exemption and must be supported by clear and convincing evidence establishing the bona fides of the marriage.

4. INA 204(c) Denials

USCIS must deny any petition filed after November 10, 1986 if the alien beneficiary previously entered into, or attempted or conspired to enter into, a marriage for the purpose of evading immigration laws.[98] When denying based on INA 204(c), USCIS must demonstrate that the record contains substantial and probative evidence of marriage fraud.[99]

The BIA has defined the substantial and probative evidence standard as "more than a preponderance of the evidence, but less than clear and convincing evidence."[100] USCIS may consider "any relevant evidence" in determining whether there is substantial and probative evidence of marriage fraud, including both direct evidence and circumstantial evidence.[101] USCIS also may consider evidence originating in prior immigration proceedings or court proceedings.[102] However, USCIS ordinarily should reach an independent conclusion based on the evidence which must be documented in the alien beneficiary's file.[103]

If there is substantial and probative evidence that the alien beneficiary's prior marriage was fraudulent and the petitioner and alien beneficiary entered into the marriage for the purpose of evading immigration laws, USCIS gives the petitioner an opportunity to overcome the finding.[104]

USCIS considers all evidence in the record, including from any previous petition,[105] to determine whether there is substantial and probative evidence of prior marriage fraud on the part of the alien beneficiary.[106]

However, when applying INA 204(c), in general, USCIS only discloses the information that USCIS directly relied upon to find that the alien beneficiary entered into, or attempted or conspired to enter into, a prior marriage for the purposes of evading immigration laws.

For example, if an alien's A-file contains a previous spousal petition filed by a different petitioner and that petitioner admitted to marriage fraud in the previous spousal petition relating to the alien beneficiary, after a full re-evaluation of all evidence in the record of the current petition, USCIS may conclude that the current petition should be denied or revoked under INA 204(c) since the record includes substantial and probative evidence of the alien beneficiary's prior marriage fraud. In such a case, USCIS discloses the prior petitioner's statements to the current petitioner as well as other evidence directly relied on in making the adverse decision, where permissible.

If the petitioner cannot overcome the finding, then USCIS denies the visa petition under INA 204(c). An officer may deny a visa petition filed on the alien beneficiary's behalf under INA 204 even if a prior visa petition was denied for reasons other than fraud.[107]

The INA 204(c) bar does not apply when the petitioner has filed a subsequent petition for the same beneficiary,[108] but USCIS may use the original evidence in subsequent petitions filed on the alien beneficiary's behalf.

5. Ineligibility for Alien Petition

An alien who knowingly made a frivolous application for asylum on or after April 1, 1997, and has a final order by an immigration judge or the Board of Immigration Appeals specifically finding the alien knowingly filed a frivolous asylum application, is permanently ineligible for any benefits under the INA,[109] including as the beneficiary of a family-based immigrant visa petition.[110] Generally, an asylum claim is frivolous if the alien knowingly fabricated any material element of the claim, and was unable to rebut such determination following sufficient notice and opportunity to do so.[111] A frivolous finding on an asylum claim may be made even if the asylum application is untimely filed or withdrawn.[112]

Footnotes

[^ 1] U.S. nationals, as defined in INA 308, are not U.S. citizens. U.S. nationals are afforded the same rights as lawful permanent residents (LPRs) to file a family-based immigration petition for certain alien relatives. See *Matter of Ah San* (PDF), 15 I&N Dec. 315 (BIA 1975) (holding that nationals, but not citizens, of the United States may also file petitions under INA 203(a)(2)). A U.S. national is a person who, though not a citizen of the United States, owes permanent allegiance to the United States (for example, persons born in American Samoa or Swains Island). See definition in Glossary.

[^ 2] In addition, Congress provided that certain spouses may self-petition in limited circumstances, including self-petitioners seeking to immigrate as an abused spouse or as a widow or widower of a U.S. citizen. See Volume 3, Humanitarian Protection and Parole, Part D, Violence Against Women Act [3 USCIS-PM D]. See the Green Card for Widow(er) of a U.S Citizen webpage.

[^ 3] For more information on how USCIS determines whether there is a bona fide marriage, see Part I, Family-Based Conditional Permanent Residents (CPRs), Chapter 3, Petition to Remove Conditions on Residence, Section A, Establishing a Bona Fide Marriage [6 USCIS-PM I.3(A)]. USCIS applies the same general principles regarding bona fide marriages for Form I-130 immigrant visa spousal petitions as it does for CPRs seeking to remove conditions on permanent resident status.

[^ 4] See *Matter of P-*, 4 I&N Dec. 610 (A.G. 1952).

[^ 5] See INA 101(a)(35).

[^ 6] See Black's Law Dictionary (12th ed. 2024).

[^ 7] See Black's Law Dictionary (12th ed. 2024).

[^ 8] See *Matter of Garcia* (PDF), 16 I&N Dec. 623 (BIA 1978).

[^ 9] See *Matter of C--*, 1 I&N Dec. 301 (BIA 1942).

[^ 10] For guidance on affidavits, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 4, Documentation, Section B, Unavailability of Records and the Use of Affidavits, Subsection 3, Affidavits [7 USCIS-PM A.4(B)(3)].

[^ 11] See *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973).

[^ 12] See *Matter of Kumah* (PDF), 19 I&N Dec. 290 (BIA 1985) (A Ghanaian court decree of divorce is accepted as evidence that a customary divorce was validly obtained, but it may not be conclusive proof because of the potential for fraud or error in the issuance.).

[^ 13] USCIS should review the Department of State's U.S. Visa: Reciprocity and Civil Documents by Country webpage to determine a document's availability and reliability to help verify the validity of civil marriage or divorce records. See 8 CFR 103.2(b). See Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence [1 USCIS-PM E.6].

[^ 14] See 1 U.S.C. 7, as amended by the Respect of Marriage Act, Pub. L. 117-228 (PDF) (December 13, 2022). See *United States v. Windsor*, 133 U.S. 2675 (2013) (holding that Section 3 of the Defense of Marriage Act (DOMA), which previously had barred recognition of same-sex marriages for federal purposes, is unconstitutional and a violation of the Fifth Amendment Due Process Clause). See *Obergefell v. Hodges*, 576 U.S. 644 (2015) (holding that the Due Process Clause of the Fourteenth Amendment guarantees the right to marry as one of the fundamental liberties it protects and applies to same-sex couples in the same manner as it does to opposite-sex couples).

[^ 15] This includes marriages between parties where one individual identifies as a member of the sex other than the sex indicated on their birth certificate or similar evidence at birth. See *Matter of Lovo-Lara*, 23 I&N Dec. 746 (BIA 2005).

[^ 16] See *Matter of Zeleniak*, 26 I&N Dec. 158 (BIA 2013). For information on exceptions for marriages USCIS does not consider valid for immigration purposes, see Section B, Eligibility for Spouses [6 USCIS-PM B.6(B)].

[^ 17] See *Matter of P-*, 4 I&N Dec. 610, 613 (A.G. 1952) (stating that as the immigration statutes do not affirmatively define marriage, "the generally accepted rule is that the validity of a marriage is governed by the law of the place of celebration").

[^ 18] See 8 CFR 204.2(a)(2) (requiring certificate of marriage issued by civil authorities as primary evidence of a marriage).

[^ 19] See *Matter of H–,* 9 I&N Dec. 640 (BIA 1962) (A polygamous marriage, though valid where contracted, is not recognized for immigration purposes.).

[^ 20] See *Matter of Zappia* (PDF), 12 I&N Dec. 439 (BIA 1967). See *Matter of Da Silva* (PDF), 15 I&N Dec. 778, 779 (BIA 1976).

[^ 21] See *Matter of Manjoukis* (PDF), 13 I&N Dec. 705 (BIA 1971).

[^ 22] See Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)].

[^ 23] See *Matter of H–,* 9 I&N Dec. 640 (BIA 1962).

[^ 24] If polygamy is valid in the place where a child was born, USCIS may consider that child to be legitimate if the laws of the child's birth country or the father's country of domicile consider the child to be legitimate. See *Matter of Mahal* (PDF), 12 I&N Dec. 409 (BIA 1967).

[^ 25] See *Matter of M-*, 3 I&N Dec. 25 (BIA 1947) (The foreign marriage was valid in Romania when a niece married her uncle, and they could have lawfully cohabited in New York, according to the view of the New York State Attorney General.). See *Matter of T* (PDF), 8 I&N Dec. 529 (BIA 1960) (holding that a marriage between an uncle and niece that was valid under the law of Czechoslovakia where the ceremony was performed and not subject to criminal sanctions under the law of Pennsylvania where the parties cohabit is lawful for immigration purposes).

[^ 26] See *Matter of Hirabayashi* (PDF), 10 I&N Dec. 722 (BIA 1964) (A marriage entered into in Colorado between first cousins, residents of Illinois, is a valid marriage in Illinois since the evidence establishes the parties did not go to Colorado with the primary intention of evading the Illinois statutes prohibiting the marriage of first cousins and there is no evidence of a strong public policy in the State of Illinois against these marriages which are valid in the place where contracted, since cohabitation between first cousins is no longer a crime under Illinois statutes). See *Matter of Zappia* (PDF), 12 I&N Dec. 439 (BIA 1967) (A marriage contracted in South Carolina in 1966 between first cousins, residents of Wisconsin, for the purpose of evading the statutory prohibition against these marriages in the State of Wisconsin, to which they immediately returned to live and in which these marriages are void and criminally incestuous, is not a valid marriage for the purpose of conferring immediate relative status on the wife). See *Matter of Da Silva* (PDF), 15 I&N Dec. 778, 779 (BIA 1976) (Marriage between an uncle and his niece under the laws of Georgia was valid for immigration

purposes even though the marriage would have been void as incestuous if solemnized in New York, because the Georgia marriage would be recognized as valid in New York and therefore did not violate New York public policy.).

[^ 27] Although the INA defines a child for immigration purposes as an unmarried person under 21 years of age, domestic law determines the definition of a minor in the context of marriage. Most U.S. states consider a minor, in the context of marriage, to generally be defined as an individual under 18 years of age.

[^ 28] U.S. state laws vary in setting minimum age requirements to marry and exceptions that may permit minors to marry. Some U.S. states do not have an age floor below which a minor cannot marry if an exception applies. However, there may still be public policy considerations that would cause the state where the parties live to refuse to recognize an out of state marriage involving a minor.

[^ 29] Officers should review the most recent information on specific state and foreign laws.

[^ 30] See *Matter of P*, 4 I&N Dec. 610 (A.G. 1952). (Regardless of the age of the petitioner and beneficiary at the time USCIS adjudicates the petition, officers must ensure that any marriage that involved a minor was lawful at inception).

[^ 31] See *Matter of Hirabayashi* (PDF), 10 I&N Dec. 722 (BIA 1964).

[^ 32] See *Matter of Zappia* (PDF), 12 I&N Dec. 439 (BIA 1967).

[^ 33] See *Lutwak v. United States*, 344 U.S. 604 (1953). See *Matter of McKee* (PDF), 17 I&N Dec. 332 (BIA 1980).

[^ 34] See the Forced Marriage webpage. See Section B, Eligibility for Spouses, Subsection 5, Additional Considerations for a Qualifying Marriage for Immigration Purpose [6 USCIS-PM B.6(B)(5)].

[^ 35] See 8 CFR 103.2(b)(7) and 8 CFR 103.2(b)(9).

[^ 36] For more information about affidavit of support considerations, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section D, Determine Admissibility, Subsection 2, Affidavit of Support Under Section 213A of the Act (Form I-864) [7 USCIS-PM A.6(D)(2)].

[^ 37] See *Lutwak v. United States*, 344 U.S. 604 (1953). See *Matter of Laureano* (PDF), 19 I&N Dec. 1, 2 (BIA 1983) (When considering whether a marriage was a sham, "[t]he central question is whether the bride and groom intended to establish a life together at the time they were married"). See *Matter of Phillis*, 15 I&N Dec. 385 (BIA 1975).

[^ 38] See *Matter of M–*, 8 I&N Dec. 217 (BIA 1958) (Where parties did not intend to enter a bona fide marriage, the marriage was deemed invalid for immigration purposes regardless of whether it would be considered valid under the domestic law of the jurisdiction where it was performed.).

[^ 39] See *Matter of Patel* (PDF), 19 I&N Dec. 774 (BIA 1988). See *Matter of Laureano* (PDF), 19 I&N Dec. 1 (BIA 1983).

[^ 40] See *Matter of Peterson* (PDF), 12 I&N Dec. 665 (BIA 1968).

[^ 41] See *Matter of McKee* (PDF), 17 I&N Dec. 332 (BIA 1980).

[^ 42] See *Matter of Laureano* (PDF), 19 I&N Dec. 1 (BIA 1983).

[^ 43] See *Matter of Laureano* (PDF), 19 I&N Dec. 1 (BIA 1983). See *Matter of Isber* (PDF), 20 I&N Dec. 676 (BIA 1993).

[^ 44] See *Matter of Ceballos*, 16 I&N Dec. 765 (BIA 1979). See *Matter of Hann*, 18 I&N Dec 196 (BIA 1982).

[^ 45] See *Matter of Arenas* (PDF), 15 I&N Dec. 174 (BIA 1975) (In determining the validity of a marriage for immigration, the law of the place of celebration of the marriage generally governs. Under Section 2.22 of the Texas Family Code, a marriage is void if either party was married and the prior marriage was not dissolved. However, the marriage becomes valid when the prior marriage is dissolved and the parties continue to reside together as husband and wife and present themselves to others as being married.).

[^ 46] See *Matter of S-*, 9 I&N Dec. 296 (BIA 1961). See *Matter of Souza*, 14 I&N Dec. 1 (BIA 1972).

[^ 47] See *Matter of P-*, 4 I&N Dec. 610 (A.G. 1952). See *Matter of Darwish*, 14 I&N Dec. 307 (BIA 1973).

[^ 48] See *Matter of Luna*, 18 I&N Dec. 385, 386 (BIA 1983) (“A foreign court must have jurisdiction to render a valid decree, and the applicable tests of jurisdiction are ordinarily those of the United States, rather than of the divorcing country”).

[^ 49] See *Matter of Karim*, 14 I&N Dec. 417 (BIA 1973) (finding that the alien had not legally terminated his prior marriage in Pakistan because he may not have complied with divorce procedures under Pakistani law).

[^ 50] See *Hilton v. Guyot*, 159 U.S. 113, 163-64 (1895) (“Every foreign judgment, of whatever nature, in order to be entitled to any effect, must have been rendered by a court having jurisdiction of the cause, and upon regular proceedings, and due notice.”). See *Animal Science Products, INC v. Hebei Welcome Pharmaceutical Company*, Petition for Writ of Certiorari, 16-1220 (2018) (“Courts in the United States have declined to recognize foreign judgments in instances where the proceedings failed to provide basic due process or otherwise violated public policy.”). See *Matter of Hussein* (PDF), 15 I&N Dec. 736 (BIA 1976).

[^ 51] See *Matter of P-*, 4 I&N Dec. 610 (A.G. 1952). See *Matter of W–* (PDF), 8 I&N Dec. 16 (BIA 1958) (California courts did not ordinarily recognize Mexican mail order divorces, and so divorce was not valid for immigration purposes as the applicant was not legally free to marry.). See *Matter of Hosseinian* (PDF), 19 I&N Dec. 453 (BIA 1987).

[^ 52] See *Matter of Revelo* (PDF), 16 I&N Dec. 685 (BIA 1979). For cases in the Ninth Circuit, a person admitted who overstays a B nonimmigrant visa does not establish domicile in California. See *Park v. Barr*, 946 F.3d 1096 (9th Cir. 2020) (holding the beneficiary’s Korean divorce and subsequent marriage in California were valid).

[^ 53] See *Matter of Ma* (PDF), 15 I&N Dec. 70 (BIA 1974).

[^ 54] See *Matter of Aldecoaotalora* (PDF), 18 I&N Dec. 430 (BIA 1983).

[^ 55] For example, a talaq divorce that is pronounced over the phone from the United States to a spouse in a country which practices Islamic law and would recognize a talaq divorce as valid, may not be valid for immigration purposes if it is not valid in the U.S. jurisdiction in which the divorce is pronounced. See *Matter of Awadalla*, 10 I&N Dec. 556, 586 (BIA 1957) (citing *Matter of M-*, 7 I&N Dec. 470 (BIA 1954)). See *Shikoh v. Murff*, 257 F.2d 306 (C.A. 2, 1958) ("A Moslem divorce pronounced in a jurisdiction which does not ordinarily apply Moslem law raises a serious question of its validity.").

[^ 56] See *Matter of Kodwo*, 24 I&N Dec. 479 (BIA 2008).

[^ 57] See *Matter of Kodwo*, 24 I&N Dec. 479 (BIA 2008).

[^ 58] See 8 CFR 103.2(b)(2)(i).

[^ 59] See *Matter of Astorga*, 17 I&N Dec. 1 (BIA 1979).

[^ 60] See *Matter of Magana* (PDF), 17 I&N Dec. 111 (BIA 1979) (Where the beneficiary entered the United States as the spouse of a U.S. citizen and concealed a prior marriage in Mexico, a decree from a Washington state court declaring the Mexican marriage invalid from its inception was not given retroactive effect for immigration purposes). See *Matter of B--*, 3 I&N Dec. 102 (BIA 1947).

[^ 61] See, for example, *Nehme v. INS*, 252 F.3d 415, 422-27 (5th Cir. 2001) (discussing legal separation for purposes of derivation of citizenship). See *Matter of Miraldo*, 14 I&N Dec. 704 (BIA 1974).

[^ 62] See INA 101(a)(35). See *Matter of B,* 5 I&N Dec. 698 (BIA 1954).

[^ 63] Determining whether a marriage was consummated is not the same as determining whether a marriage is bona fide for immigration purposes. See *Matter of Peterson* (PDF), 12 I&N Dec. 663 (BIA 1968) (the BIA affirmed that consummation of a marriage is not a requirement for proving that the marriage is bona fide.). See *Matter of M*, 7 I&N, Dec. 601 (BIA 1957) (A beneficiary in deportation proceedings was found to not have committed marriage fraud even though the marriage was never consummated because he had tried to consummate the marriage and his wife refused because she was interested in another man).

[^ 64] For example, marriage ceremonies conducted using applications like ZOOM and Facetime. While a marriage certificate is generally prima facie evidence of a valid marriage, the officer may request further evidence if it’s unclear that the petitioner has met the burden of proving that a virtual marriage is valid and that the parties complied with all legal requirements of the state or country that issued the marriage certificate.

[^ 65] See *Matter of P-*, 4 I&N Dec. 610 (A.G. 1952). See 8 CFR 204.2(a)(2) (requiring certificate of marriage issued by civil authorities).

[^ 66] See INA 101(a)(35).

[^ 67] For additional information about forced marriages, see the Forced Marriage webpage.

[^ 68] See *Matter of Lenning* (PDF), 17 I&N Dec. 476 (BIA 1980).

[^ 69] See *Matter of McKee* (PDF), 17 I&N Dec. 332 (BIA 1980).

[^ 70] See Section B, Eligibility for Spouses, Subsection 4, Legally Free to Marry [6 USCIS-PM B.6(D)(4)].

[^ 71] See 8 CFR 103.2(b)(1), 8 CFR 204.1(f), 8 CFR 204.1(g), and 8 CFR 204.2(a)(2).

[^ 72] See 8 CFR 204.2(a)(2).

[^ 73] See 8 CFR 216.4(a)(5)(i). This guidance is applicable for conditional permanent residents to establish their marriage is bona fide per statutory requirements and is similarly applicable for all spousal immigrant visa petitions. See 8 CFR 204.2(a)(1)(i)(B)(1).

[^ 74] See 8 CFR 216.4(a)(5)(ii) and 8 CFR 204.2(a)(1)(i)(B)(2).

[^ 75] See 8 CFR 216.4(a)(5)(iii) and 8 CFR 204.2(a)(1)(i)(B)(3).

[^ 76] See 8 CFR 216.4(a)(5)(iv) and 8 CFR 204.2(a)(1)(i)(B)(4).

[^ 77] See 8 CFR 216.4(a)(5)(v) and 8 CFR 204.2(a)(1)(i)(B)(5).

[^ 78] See 8 CFR 216.4(a)(5)(vi) and 8 CFR 204.2(a)(1)(i)(B)(6).

[^ 79] See 8 CFR 204.2(a)(2).

[^ 80] See *Matter of Pearson* (PDF), 13 I&N Dec. 152 (BIA 1969) (The marriage following a divorce can only be considered valid if the divorce is considered valid under the laws of the place where the marriage was contracted.).

[^ 81] See 8 CFR 204.1(f). See the instructions for the Petition for Alien Relative (Form I-130).

[^ 82] See 8 CFR 103.2(b)(2)(i).

[^ 83] See 8 CFR 204.2(a)(1)(i)(B)(5).

[^ 84] See Section D, Adjudication of Spousal Petitions [6 USCIS-PM B.6(D)].

[^ 85] In some instances, the petitioner or alien beneficiary may be ineligible from petition approval even if the qualifying relationship is established. For example, if the Attorney General has found that an alien made a frivolous application for asylum and the alien received notice, the alien is permanently ineligible for any immigration benefits under the INA. See INA 208(d)(6).

[^ 86] See 8 CFR 103.2(b)(9).

[^ 87] If an interview, following an initial interview, is required to verify the bona fides in the New York District Office, USCIS provides the following to the petitioner: a written notice describing the rights of the parties involved, a separate attachment of the list of rights with the appointment letter, and a list of documents to submit at the time of the interview. See *Stokes v. INS*, No. 74 Civ. 1022 (S.D.N.Y. Nov. 10, 1976).

[^ 88] In addition to other reasons for insufficient documentary evidence, there may be potential integrity issues with civil records from certain countries. In these cases, officers should check the U.S. Department of State's U.S. Visa: Reciprocity and Civil Documents by Country webpage to determine a document's availability and reliability, and proceed to interview the petitioner and alien beneficiary as needed.

[^ 89] See INA 204(a)(2)(A).

[^ 90] See 8 CFR 103.2(b)(1), 8 CFR 204.2(a)(1)(i)(A), and 8 CFR 204.2(a)(1)(i)(C). 8 CFR 204.2(a)(1)(i)(A) was amended in 1992, superseding the BIA decision in *Matter of Pazandeh*, 19 I&N Dec. 884 (BIA 1989).

[^ 91] See INA 204(a)(2)(A). If the LPR petitioner naturalizes before or after the petition is filed and the alien beneficiary's status changes to the spouse of a U.S. citizen, USCIS does not apply this approval bar in its adjudication.

[^ 92] See *Matter of Patel* (PDF), 19 I&N Dec. 774, 783 (BIA 1988). See *Matter of Carrubba* (PDF), 11 I&N Dec. 914, 917 (BIA 1966).

[^ 93] See INA 204(g) and INA 245(e). See 8 CFR 245.1(c)(8), which defines when an alien has been placed into proceedings and when proceedings are terminated.

[^ 94] See 8 CFR 204.2(a)(1)(iii)(C).

[^ 95] See *Matter of Brantigan* (PDF), 11 I&N Dec. 493 (BIA 1966). See 8 CFR 245.1(c)(8)(iii) and 8 CFR 204.2(a)(1)(iii).

[^ 96] See 8 CFR 103.2(b)(1), 8 CFR 204.2(a)(1)(iii)(C), and 8 CFR 204.2(a)(1)(iii)(D).

[^ 97] See 8 CFR 245.1(c)(8)(iv).

[^ 98] See INA 204(c). See 8 CFR 204.2(a)(1)(ii). INA 204(c) prohibits USCIS from approving any immigrant visa petition, not just a Form I-130 petition. Accordingly, if an alien is a beneficiary of an Immigrant Petition for Alien Workers (Form I-140) or a Petition for Amerasian, Widow(er) or Special Immigrant (Form I-360), and the beneficiary has attempted or conspired to enter into a fraudulent marriage, USCIS is also be barred from approving the Form I-140 petition.

[^ 99] See *Matter of Pak*, 28 I&N Dec. 113 (BIA 2020) (the record must contain substantial and probative evidence of prior marriage fraud). See *Matter of Tawfik* (PDF), 20 I&N Dec. 166 (BIA 1990).

[^ 100] See *Matter of P. Singh*, 27 I&N Dec. 598 (BIA 2019).

[^ 101] See *Matter of P. Singh*, 27 I&N Dec. 598, 607-08 (BIA 2019).

[^ 102] See *Matter of Tawfik* (PDF), 20 I&N Dec. 166 (BIA 1990).

[^ 103] See *Matter of Tawfik* (PDF), 20 I&N Dec. 166 (BIA 1990). See *Matter of Agdinaoay*, 16 I&N Dec. 545 (BIA 1978) (a final order of deportation based on a marriage fraud finding provides a clear and substantial basis for applying the INA 204(c) bar).

[^ 104] Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section G. Derogatory Information [1 USCIS-PM E.6(G)].

[^ 105] INA 204(c) does not require the filing of a previous spousal petition or the existence of a prior marriage. Evidence of an attempt or conspiracy to engage in a marriage through fraud is sufficient to trigger INA 204(c).

[^ 106] The substantial and probative evidence standard requires the examination of all relevant evidence and a determination as to whether such evidence, when viewed in its totality, establishes, with sufficient probability, that the marriage is fraudulent. Both direct and circumstantial evidence may be considered in determining whether there is substantial and probative evidence of marriage fraud under INA 204(c), and circumstantial evidence alone may be sufficient to constitute substantial and probative evidence. See *Matter of Singh*, 27 I&N Dec. 598 (BIA 2019). See *Matter of Pak*, 28 I&N Dec. 113 (BIA 2020) (“Where there is substantial and probative evidence that a beneficiary’s prior marriage was fraudulent and entered into for the purpose of evading the immigration laws, a subsequent visa petition filed on the beneficiary’s behalf is properly denied pursuant to section 204(c) of the Immigration and Nationality Act… even if the first visa petition was denied because of insufficient evidence of a bona fide marital relationship.”).

[^ 107] See *Matter of Tawfik* (PDF), 20 I&N Dec. 168 (BIA 1990) and *Matter of Pak*, 28 I&N Dec. 113 (BIA 2020).

[^ 108] See *Matter of Isber* (PDF), 20 I&N Dec. 676 (BIA 1993).

[^ 109] See 8 CFR 208.20. The provisions of 8 CFR 208.20 that are currently applicable existed prior to changes made by the rule titled Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 FR 80274 (Dec. 11, 2020) (final rule amending 8 CFR parts 208, 235, 1003, 1208, 1235, also called the “Global Asylum Rule”). The Global Asylum Rule was to go into effect on January 11, 2021. However, it was enjoined on January 8, 2021, in *Pangea Legal Services v. Department of Homeland Security*, 512 F. Supp. 3d 966 (N.D. Cal. 2021) (order granting preliminary injunction). The previous version of 8 CFR 208.20 remains in effect. An alien is not precluded from seeking withholding of removal under section 241(b)(3) of the Act or protection under the regulations issued to implement the Convention Against Torture.

[^ 110] See INA 208(d)(6). Depending on advice of another to make a frivolous claim does not exempt an alien from the permanent bar; see instructions for Application for Asylum and for Withholding of Removal (Form I-589).

[^ 111] See *Matter of Y-L-* (PDF), 24 I&N Dec. 151, 153-63 (BIA 2007).

[^ 112] See *Matter of M-S-B-*, 26 I&N Dec. 872 (BIA 2016).