U.S. Citizenship and Immigration Services

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21.3 Petition for a Spouse.

(a) Petition By Citizen or LPR for a Spouse .

In addition to the general filing and adjudication procedures and issues discussed in **Chapter 21.2** of this *field manual* , this section will discuss matters more specific to the adjudication of an I-130 petition filed by a citizen or LPR on behalf of his or her spouse.

(1) Procedural Concerns Particular to Spousal Petitions .

(A) Concurrent Filing of I-130 and I-485 .

A petitioner may file an I-130 immigrant visa petition and the beneficiary may file an I-485 adjustment application concurrently. The petition and application are filed at the local office which has jurisdiction over the beneficiary's place of residence in the United States. (The exception to this is that persons residing in Maryland file the concurrent petition and application through the Vermont Service Center, which forwards them to the Baltimore office after initial processing.) In order to file concurr ently, the I-130 petitioner and the I-485 applicant (who is also the I-130 beneficiary) must be able to meet all the requirements of both forms. For example:

· If the beneficiary of the I-130 is subject to section 212(e) of the Act as an exchange visitor who has neither complied with nor obtained a waiver of the 2-year foreign residency requirement, the I-485 cannot be filed. The I-130 can be filed separately at the appropriate service center.

the appropriate service center.

· If the petitioner entered on a K-1 visa and the I-130 petitioner is not the same person who filed the I-129F petition, the alien is prohibited from adjusting status.

(B) Supporting Documents .

As with other relative petitions, documentation must be submitted to establish both the standing of the petitioner (evidence of U.S. citizenship or lawful permanent residence) and validity of relationship (evidence of the lawful marriage of the petitioner and beneficiary and of the termination of any and all prior marriages of both parties). In addition, in the case of spousal petitions, the supporting documentation must include ADIT-style photographs of both the petitioner and the beneficiary, a Form G-325 A properly completed by the petitioner, and a Form G-325A properly completed by the beneficiary. If the petitioner has failed to provide any of these documents, either:

· Send the petitioner an RFE requesting the missing documentation; or

· If the I-130 was filed concurrently with the beneficiary's adjustment application, require the petitioner to bring the missing documentation to the interview.

(2) Adjudication Issues .

In addition to the more general adjudication issues discussed in subchapter 21.2, pay attention to these concerns pertaining specifically to spousal visa petitions:

(A) Proxy Marriages .

Section 101(a)(35) of the Act provides that the term "spouse", "wife", or "husband" does not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage has been consummated. (Note: Consummation of a marriage can only occur after the ceremony, there is no such thing as "pre-consummation" of a marriage.)

(B) Validity of a Marriage Celebrated in a Foreign Country .

certificate, duly certified by the custodian of the official record. As a general rule, the validity of a marriage is judged by the law of the place of celebration. If the marriage is voidable but no court action to void the marriage has taken place, it will be considered valid for immigration purposes. However, if a marriage is valid in the country where celebrated but considered offensive to public policy of the United Sta tes, it will not be recognized as valid for immigration purposes. Plural marriages fall within this category.

(C) Marriage Between Close Relatives .

In some foreign countries, and some states in the United States, marriages between close relatives (e.g., cousins) are permitted under certain circumstances. In cases where such marriages do not offend the laws of the state where the parties reside, the marriage will be recognized for immigration purposes.

(D) Fraudulent Marriage Prohibition .

Section 204(c) of the Act provides that:

Notwithstanding the provisions of subsection (b) no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws[,] or (2) the Attorney General has determined that the ali en has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

If there is evidence that the beneficiary has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws, the petition must be denied. However, the evidence of the attempt or conspiracy must be contained in the alien's file. (See also **8 CFR 204.2(a)(1)(ii)** .)

Note

Section 204(c) prohibits the approval of any petition, not just an I-130 petition. Accordingly, if an alien has attempted of conspired to enter into a fraudulent marriage, USCIS would also be barred from approving an I-140 petition filed in his or her behalf.

(E) Freedom to Marry .

names of all prior spouses, the response to the question is sometimes inaccurate. The reasons given for an inaccurate answer are numerous, but the most common reasons are:

- Desire to conceal prior marriage(s) from spouse;

- Separated for many years and unsure if legally divorced;

- Even though legally divorced, not in possession of the divorce decree and unwilling to take time to get it;

- Not divorced because divorce is not allowed in the person's country of origin (e.g., the Philippines).

(F) Legal Separation vs. Divorce or Annulment .

A legal separation is not proof of marital capacity. A final decree of divorce, annulment or death must be presented as proof of termination of a prior marriage. If either party's prior marriage(s) has/have been terminated by divorce or annulment, the petitioner must establish that the divorce or annulment is valid under the laws of the place where pronounced. It must then be judged by the law of the jurisdiction where the parties to the divorce were actually residing at the time of the divorce.

(G) Legal Separation vs. Separate Cohabitation .

You may deny the visa petition in cases where the parties entered into a valid marriage, but have since obtained a legal separation prior to the final adjudication of the visa petition. However, if the parties entered into a valid marriage, have not obtained a legal separation, but simply reside separately, the petition may not be denied merely because of such separate cohabitation. The issue of separate cohabitation is relevant, however, in determining the intent of the parties at the time of the marriage.

(H) Interviewing Petitioner and Spouse .

You will often have to question both the petitioner and the beneficiary to determine whether the marriage is bona fide. Remember that the issue to be resolved during the interview is the bona fides of

marriage is valid and was not entered into solely for immigration purposes.

On the other hand, a marriage which was contracted solely for immigration purposes does not confer benefits under the Act. A number of factors may raise questions about the intent of the marriage, and therefore necessitate more in depth questioning (see Chapter 15 regarding interviewing techniques), or even a field examination (see Chapter 17) or an investigation (see Chapter 10.5(d)). Some indications that a marriage may have been contracted solely for immigration benefits include:

- Large disparity of age;
- Inability of petitioner and beneficiary to speak each other's language;
- Vast difference in cultural and ethnic background;
- Family and/or friends unaware of the marriage;
- Marriage arranged by a third party;
- Marriage contracted immediately following the beneficiary's apprehension or receipt of notification to depart the United States;
- Discrepancies in statements on questions for which a husband and wife should have common knowledge;
- No cohabitation since marriage;
- Beneficiary is a friend of the family;
- Petitioner has filed previous petitions in behalf of aliens, especially prior alien spouses.

formal requirements of the law but which the parties entered into with no intent, or "good faith", to live together and which is designed solely to circumvent the immigrations laws. Sham marriages are not recognized for immigration purposes. See **Matter of Patel** , 19 I&N Dec. 774 (BIA 1988).

(I) Same Sex Marriages .

In *United States v. Windsor*, 133 S. Ct. 2675 (2013), the Supreme Court held that section 3 of the Defense of Marriage Act (DOMA) (1 U.S.C. § 7), which previously had barred recognition of same-sex marriages for Federal purposes, is unconstitutional. As a result, same-sex marriage is now a lawful basis for all immigration benefits based on marriage.

In order to be valid for immigration purposes, a same-sex marriage must meet all of the same requirements as an opposite-sex marriage. As with opposite-sex relationships, a civil union, domestic partnership, or other relationship that is not recognized as a legal marriage in the place of celebration is not considered a marriage for immigration purposes.

A same-sex marriage that is legally valid in the jurisdiction in which it was celebrated is valid for immigration purposes, regardless of whether the jurisdiction in which the parties reside recognizes same-sex marriage. See Matter of Zeleniak, 26 I. & N. Dec. 158 (BIA 2013).

(J) Transgender issues and marriage. [Revised 8/10/12; PM-602-0061.1, AD12-02]

Prior to the Supreme Court's ruling in *United States v. Windsor*, 133 S. Ct. 2675 (June 27, 2013), benefits involving the marriage of transgender individuals could be granted pursuant to the Board of Immigration Appeals decision in *Matter of Lovo-Lara*, 23 I&N Dec. 746 (BIA 2005). *Lovo-Lara* provides that benefits based upon marriage may be approved on the basis of a marriage between a transgender individual and an individual of the other gender if the Petitioner/Applicant establishes 1) the transgender individual has legally changed his or her gender and *subsequently*[1] married an individual of the other gender, 2) the marriage is recognized as a heterosexual marriage under the law where the marriage took place (*Matter of Lovo-Lara, supra*), and 3) the law where the marriage took place does not bar a marriage between a transgender individual and an individual of the other gender. *Lovo-Lara* remains binding precedent for marriages that were celebrated in a jurisdiction that does not allow same-sex marriages. However, following *Windsor*, whether a spouse is transgender has no bearing on the validity of the marriage that was celebrated in a jurisdiction that recognizes same-sex marriage.

A timely registered marriage certificate from the appropriate civil authority is prima facie evidence of the validity of a marriage. When an officer determines, based on the record or through interview or other means, that a party to a petition has changed gender, the officer must ascertain that the marriage is a valid marriage under the laws of the jurisdiction in which it was contracted.

The validity of the marriage must be established by the preponderance of the evidence. As with most administrative immigration proceedings, the petitioner bears the "preponderance of the evidence" burden.

As such, officers should be satisfied that this burden is met if the marriage is recognized in the jurisdiction in which it was contracted. USCIS will presume the validity of the marriage involving a transgender individual in the absence of jurisdictional law and/or precedent that would place the validity of such marriage in doubt.

Only in jurisdictions where a specific law or precedent either prohibits or sets specific requirements for a legal change of gender, and does not permit same-sex marriage, is the individual required to demonstrate that he or she has met the specific requirements needed to establish the legal change of gender and the validity of the marriage. The individual may also show, in an appropriate case, that the law barring a legal change of gender for purposes of marriage has changed and that the marriage is valid under current law, or that under the particular facts of the case and law of the jurisdiction in question, the marriage should be recognized (for example, if state law recognizes neither gender change nor same-sex marriage, then a marriage between a couple that is same-sex as a result of gender change of one of the parties may be considered lawful).

Where an individual claims to have legally changed his or her gender, USCIS will recognize that claim based upon the following documentation:

- Amended birth certificate; or
- Other official recognition of new gender, such as a passport, court order, certificate of naturalization or citizenship, or driver's license (note that some jurisdictions may have a lower threshold for issuing a driver's license than to establish a legal change of gender for purposes of the marriage laws, and USCIS would require additional evidence that the individual met the threshold for marriage, if applicable); or
- Medical certification of the change in gender from a licensed physician (a Doctor of Medicine (M.D.) or Doctor of Osteopathy (D.O.)). This is based on standards[2] and recommendations[3] of the World Professional Association for Transgender Health, who are recognized as the authority in this field by the American Medical Association.[4] Medical certification of gender transition received from a licensed physician (an M.D. or D.O.) is sufficient documentation, alone, of gender change. If the physician certifies the gender transition, USCIS will not question the certificate by asking for specific information about the individual's treatment. Additional information about medical certifications:
  - For the purposes of this chapter only an M.D. or a D.O. qualifies as a licensed physician. Officers may accept medical certifications from any number of specialties as well as from general practitioners.
  - Statements from persons who are not licensed physicians, such as psychologists, physician assistants, nurse practitioners, social workers, health practitioners, chiropractors, are not acceptable.
  - The medical certification should include the following information:
    - Physician's full name;
    - Medical license or certificate number;
    - Issuing state, country, or other jurisdiction of medical license/certificate;
    - Drug Enforcement Administration registration number assigned to the doctor or comparable foreign registration number, if applicable;
    - Address and telephone number of the physician;
    - Language stating that the individual has had appropriate clinical treatment for gender transition to the new gender (male or female);
    - Language stating that he/she has either treated the applicant in relation to the applicant's change in gender or has reviewed and evaluated the medical history of the applicant in relation to the applicant's change in gender and that he/she has a doctor/patient relationship with the applicant

USCIS will not ask for records relating to any such surgery.

These documents are listed in order of evidentiary preference. Officers must recognize, however, that the personal circumstances and jurisdictions involved in an individual's case will affect availability of specific types of documentation. As evidence of the new gender, officers should treat an amended birth certificate as carrying the same weight as USCIS would normally give to other timely registered primary evidence.

This guidance also applies to the adjudication of all immigration benefits based upon marriage, including but not limited to a Petition for Alien Fianc?(e). In the case of a proposed marriage involving a transgender individual, the petition may be approved assuming the same conditions are met for legal gender change and validity of the marriage as described above. If the record indicates the parties' specific intent to marry in a jurisdiction where the marriage would not be valid, the officer will issue an intent to deny in which the petitioner is informed that the marriage would not be valid for immigration purposes and why. USCIS will provide the petitioner the opportunity to submit evidence that USCIS's interpretation of the jurisdiction's law and/or precedent is incorrect or provide an affidavit attesting that the intended marriage will take place in a jurisdiction where the marriage will be valid for immigration purposes.

The same principles for determining the validity of a marriage involving a transgender individual for a spousal Petition for Alien Relative apply to those who may derive an immigrant or nonimmigrant benefit by virtue of a spousal relationship.

If an officer has questions about the validity of a marriage involving a transgender individual, the officer should contact local USCIS counsel.

As in all adjudications, if an officer finds significant substantive discrepancies, has reason to question the accuracy or authenticity of documents submitted, or finds other indicators of fraud, the case may be referred to FDNS in accordance with current national and local policies.

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(K) Immigration Marriage Fraud Amendments of 1986 .

In an effort to deter immigration-related marriage fraud, Congress passed the Marriage Fraud Amendments of 1986 on November 10, 1986. This legislation had a major effect on the adjudication of relative petitions, including:

- In many cases, certain conditions had to be met prior to the acceptance or approval of certain petitions on behalf of spouses (see paragraphs (L) and (M).

having engaged in a fraudulent marriage.

· An alien's lawful permanent residence is "conditional" if the qualifying marriage occurred less than 2 years prior to the alien's immigration or adjustment. The provision requires that a conditional resident alien seek removal of the conditional basis of the residence shortly before the second anniversary of the date on which he or she immigrated or adjusted (see **Chapter 25** regarding removal of conditions).

(L) Marriage within Five Years of Obtaining LPR Status .

Section 204(a)(2)(A) of the Act generally prohibits the approval of a visa petition filed by a lawful permanent resident for a spouse within 5 years of the date on which the petitioner became a LPR if that LPR obtained his or her residence status through a prior marriage. The LPR can overcome this prohibition if he or she establishes by clear and convincing evidence that the prior marriage was not entered into with the purpose of evading the immigration laws, or that the prior marriage ended through death. **8 CFR 204.2(a)(1)(i)** specifies the type of evidence which the petitioner must submit to meet the clear and convincing standard. If the petitioner falls within this restriction and has not submitted the requisite evidence, send him or her a letter explaining the deficiency and requesting additional evidence. If satisfactory evidence is not submitted within 60 days (or 120 days if the petitioner has requested and been granted additional time), deny the petition.

(M) Marriage During Proceedings .

There is a general prohibition against approval of visa petition filed on behalf of an alien by a United States citizen or a lawful permanent resident spouse if the marriage creating the relationship occurred on or after November 10, 1986, and while the alien was in exclusion, deportation, or removal proceedings, or judicial proceedings relating thereto. Issues concerning determination of commencement and termination of proceedings and exemptions are covered in **8 CFR 245.1(c)(9)** , except that the burden in visa petition proceedings to establish eligibility for the exemption in **8 CFR 245.1(c)(9)(iii)(F)** rests with the petitioner. The petitioner can request an exemption if he or she:

(i) Is able to establish through clear and convincing evidence that:

· the marriage was entered into in good faith; and

· the marriage was not entered into for the purpose of obtaining LPR status for the beneficiary; or

date of the marriage.

Note

If the alien was deported from the United States (or was a "self- deport"), he or she may need permission to reapply before immigrating to the United States, but not before the I-130 may be approved. (See **Chapter 43** of this field manual.)

(3) Closing Action . See Chapter 21.2(g) of this field manual.

(b) Petition for Widow(er) .

(1) Background .

The Immigration Act of 1990 expanded the definition of immediate relatives to include spouses of United States citizens who had been married at least two years before their spouse died. A widow(er) of a U.S. citizen may file a petition on his or her own behalf to be classified as an immediate relative under Section 201(b) of the Act. **Section 201(b)(2)(A)(i)** of the Act and **8 CFR 204.2(b)** govern the process. An alien who obtains an immigrant visa or adjustment of status through this process is not subject to the conditional resident provisions of section 216 of the Act.

(2) Procedure .

An eligible widow or widower may apply for immediate relative classification by filing Form I-360 concurrently with his or her adjustment application with the Service Center having jurisdiction over the petitioner's residence. If the petitioner resides outside the United States, the I-360 petition should be filed with the USCIS office or American consulate having jurisdiction over such residence.

(3) Eligibility ,

Widow(er) may be classified as an immediate relative if:

· He/she was married for at least two years to a United States citizen (**Note:** The United

· The petition was filed within two years of the death of the citizen spouse or before November 29, 1992, if the citizen spouse died before November 29, 1990;

· The alien petitioner and the citizen spouse were not legally separated at the time of the U.S. citizen's death; and

· The alien spouse has not remarried.

(4) Evidence .

The petition must be accompanied by the following evidence:

· Evidence of citizenship of the United States citizen (birth certificate, certificate of naturalization, certificate of citizenship, or U.S. passport); and

· Evidence of the relationship, which includes:

– Marriage certificate issued by civil authorities;

– Proof of the terminations of all prior marriages of both husband and wife (divorce or annulment decrees or death certificates of prior spouses); and

– Death certificate of the U.S. citizen issued by civil authorities.

Primary evidence of the relationship (as listed above) is preferred. If the primary evidence is not available, secondary evidence may be considered (see **Chapter 11** of this field manual).

(5) Adjudication Issues .

concerns are the same (dissolution of any and all prior marriages, fraud, etc.). The most significant difference in the adjudication is the obvious one: the citizen cannot be questioned as to th e bona fides of the marriage. However, the burden of proof still rests with the petitioner (who in this case is also the beneficiary), and the resolution of questions regarding the bona fides of the marriage is still the petitioner's responsibility. The basic techniques for determining whether the marriage is suspect still exist: examination of the paper trail; formal interrogation of the petitioner; and field examination or investigation.

Factors which may lead you to doubt the bona fides of the marriage and to more intensively question the petitioner (or to call for a field examination or investigation) include:

· A large age discrepancy between the petitioner and the (now) deceased citizen at the time of the marriage;

· Ill health of the citizen at the time of the marriage, although this is obviated to some extent by the requirement that the marriage be in existence for at least 2 years before the death of the citizen;

· Lack of common residence of the petitioner and the citizen prior to the latter's demise;

· Lack of intermingling of financial assets and liabilities (and other resources and obligations).

(6) Closing Action .

(A) Approval .

If the petition is approved:

· Place the examiner's approval stamp in the Action Block on the petition;

· Sign your name;

the petitioner;

· If the petitioner will be applying for an immigrant visa, forward the petition to the Department of State's National Visa Center;

· If the widow(er) is in the U.S. and is eligible for adjustment of status under Section 245 of the Act, retain the approved petition and write "245 Adjust" in the Consulate box.

(B) Denial .

If the petition is denied, notify the widow(er) in writing of the reasons for the denial. As required in Chapter 10.7(b)(5) of this manual, the decision must include information about appeal rights and the opportunity to file a motion to reopen or reconsider.

(7) Child of Petitioning Widow(er) .

A child of a petitioning widow(er) classified as an immediate relative is also eligible for classification as an immediate relative. Except as provided in section 423 of the Patriot Act (see paragraph (b)(8)), no separate petition is filed for such child. The child of the petitioning widow(er) need not be the child of the deceased citizen and could have been born either before, during, or after the marriage of the petitioner to the (now) deceased citizen. However, the child would **not** be eligible for derivative classification under the widow(er) provision if:

· He or she has reached the age of 21;

· He or she is married;

· The petitioning widow(er) has remarried;

· He or she was born after date on which the petitioning widow(er) immigrated to the U.S.

When the widow/widower provisions were first incorporated into the law (1990), there was no provision for the child of such widow or widower. The provision which allows for immediate relative classification for the child was added by section 219(b)(1) of the Technical Corrections Act of 1994. If a widow(er) who immigrated under the pre-1994 version of this provision had a child who (still) qualifies under the 1994 revision, that child can immigrate under this provision, without the filing of a new petition.

Note 2

Although the statute is silent on whether the child must be accompanying or following to join the petitioning widow(er)/parent, 8 CFR 204.2(b)(4) states that the child "may accompany or follow to join." Accordingly, by regulation, the child cannot be admitted or adjusted unless and until the petitioning widow(er)/parent has been admitted or adjusted.

(8) Special Provisions Added by the USA Patriot Act of 2001 .

In response to the September 11, 2001, terrorist attack on the World Trade Center and the Pentagon, Congress passed Public Law 107- 56, Act of October 26, 2001, 115 Stat. 272 (the "USA Patriot Act"). Section 423 of that law expanded the widow(er) self-petition entitlement for widow(er)s of citizens killed as a direct result of those terrorist acts. It did so in two significant ways:

· It provided that an otherwise qualifying widow(er) of a citizen killed in the terrorist attacks of that day may self-petition without any regard to the length of the marriage; and

· It provided that any child of a U.S. citizen who was killed in one of the terrorist acts of September 11, 2001, may file a petition for status as an immediate relative child within two years of the death of the parent, regardless of changes in age or marital status. (In other words, he or she must have met the definition of child on September 11, 2001, but could have turned 21 and/or married after that date.) As a result of the child's ability to self-petition, the regulatory "accompanying or following to j oin" requirement that normally attaches to the child of a widow(er) (see Note 2 of paragraph (b)(6)) does not apply in the case of a child of a citizen killed as a direct result of the September 11, 2001 terrorist attack.

All other statutory requirements remain unchanged, as do all other aspects of the adjudication of the I-360 petition described in this field manual.

Note

Although a child of a citizen killed as a direct result of the September 11, 2001, terrorist attacks

(c) Precedent Decisions Relating to Spouse Petitions .

In addition to the decisions cited in section 21.2(h), which apply to I-130 petitions in general, the following precedents apply to petitions filed for a spouse:

· **Matter of B–** , 5 I&N Dec. 698 (BIA 1954) . A proxy marriage must be consummated to be valid for benefits under the I&N Act.

· **Matter of M–** , 8 I&N Dec. 217 (BIA 1958) . Where no bona fide husband-wife relationship was intended, a marriage is deemed invalid for immigration purposes regardless of whether it would be considered valid under the domestic law of the jurisdiction where it was performed.

· **Matter of Agoudemos** , 10 I&N Dec. 444 (BIA 1964) ; **Matter of G–** , 9 I&N Dec. 89 (BIA 1960) . A marriage which is voidable but not void without any action to void the marriage is generally valid for benefits under the I&N Act.

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

· **Matter of Zappia** , 12 I&N Dec. 439 (BIA 1967) . A marriage complying with all the requirements of the state of celebration might nevertheless be deemed invalid if it is invalid under the laws of the state where the parties are domiciled at the time of the marriage and where both intend to make their home afterward or if it violates a strong public policy of the state of domicile.

· **Matter of Pearson** , 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.

· **Matter of Phillis** , 15 I&N Dec. 385 (BIA 1975) . The facts of an individual case may suggest or imply that the marriage was entered into solely for the purpose of obtaining immigration benefits. The mere denial of fraud does not overcome the inference and is insufficient to sustain the petitioner's burden of proof.

· **Matter of P–** , 4 I&N Dec. 610 (BIA 1952) . The validity of a marriage is generally governed by the law of the place where it is celebrated.

· **Matter of Lenning** , 17 I&N Dec. 476 (BIA 1980) . A petition was properly denied where the parties entered into a formal, written separation agreement notwithstanding the fact that the marriage had not been finally dissolved by an absolute divorce decree.

· **Matter of W–** , 8 I&N Dec. 16 (BIA 1958) . A Mexican "mail order" divorce, not ordinarily recognized as valid by California courts,.was not valid for immigration purposes, thus the applicant was not legally free to marry.

· **Matter of Kurys** , 11 I&N Dec. 315 (BIA 1965) . A visa petition filed under compulsion of a court order by a petitioner who stated that a bona fide marital relationship did not exist and that she did not intend to live with her husband is properly denied. The petition was not filed in good faith.

· **Matter of Arenas** , 15 I&N Dec. 174 (BIA 1975) . In determining the validity of a marriage for immigration purposes, the law of the place of celebration of the marriage will generally govern. Under Section 2.22 of the Texas Family Code, a marriage is void if either party was married and the prior marriage is 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.

· **Matter of DaSilva** , 15 I&N Dec.778 (BIA 1976) . A marriage between an uncle and his niece is valid for immigration purposes for a couple who reside in New York but who marry in Georgia where marriage between and uncle and niece are legal. Since the marriage was legally contracted in Georgia and is thus not regulated by New York law nor violative of New York public policy, the marriage is recognized as valid in New York and is valid for immigration purposes.

· **Matter of Magana** , 17 I&N Dec. 111 (BIA 1979) . Where the respondent entered the United States as the spouse of a citizen, concealing the fact of his prior marriage in Mexico, a decree from a Washington state court declaring the Mexican marriage invalid from its inception will not be given retroactive effect for immigration purposes.

· **Matter of Laureano** , 19 I&N Dec. 1 (BIA 1983) . A marriage entered into for the primary purpose of circumventing the immigration laws, commonly referred to as fraudulent or sham marriage, is not recognized for the purpose of obtaining immigration benefits.

accepted as evidence that a customary divorce was validly obtained, however, it is not deemed to be conclusive proof of the facts certified therein because of the potential for fraud or error in the issuance.

- **Matter of Zeleniak** , 26 I. & N. Dec. 158 (BIA 2013). Section 3 of the Defense of Marriage Act, 1 U.S.C. § 7, is no longer an impediment to the recognition of lawful same-sex marriages and spouses under the Immigration and Nationality Act if the marriage is valid under the laws of the jurisdiction where it was celebrated.

Notes:

[1] Please consult with OCC in cases where the marriage was originally an opposite-sex marriage celebrated in a state that does not recognize same-sex marriage, and one of the spouses changed gender after the marriage. Return

[2] Standards of Care, 7th Version (2012), World Professional Association for Transgender Health (WPATH) Return

[3] Identity Recognition Statement (2010), World Professional Association for Transgender Health (WPATH), Return

[4] American Medical Association. Res. 122; A-08, Removing Barriers to Care for Transgender Patients (2008) Return

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