Same-Sex Marriages

Statement from Secretary of Homeland Security Janet Napolitano on July 1, 2013:

"After last week's decision by the Supreme Court holding that Section 3 of the Defense of Marriage Act (DOMA) is unconstitutional, President Obama directed federal departments to ensure the decision and its implication for federal benefits for same-sex legally married couples are implemented swiftly and smoothly. To that end, effective immediately, I have directed U.S. Citizenship and Immigration Services (USCIS) to review immigration visa petitions filed on behalf of a same-sex spouse in the same manner as those filed on behalf of an opposite-sex spouse."

Frequently Asked Questions

Petitioning for my Spouse

Q1: I am a U.S. citizen or lawful permanent resident in a same-sex marriage to a foreign national. Can I now sponsor my spouse for a family-based immigrant visa?
A1: Yes, you can file the petition. You may file a Form I-130 (and any applicable accompanying application). Your eligibility to petition for your spouse, and your spouse's admissibility as an immigrant at the immigration visa application or adjustment of status stage, will be determined according to applicable immigration law and will not be automatically denied as a result of the same-sex nature of your marriage.

Q2. I am a U.S. citizen who is engaged to be married to a foreign national of the same sex. Can I file a fiancé or fiancée petition for him or her?
A2. Yes. You may file a Form I-129F. As long as all other immigration requirements are met, a same-sex engagement may allow your fiancé to enter the United States for marriage.

Q3: My spouse and I were married in a U.S. state that recognizes same-sex marriage, but we live in a state that does not. Can I file an immigrant visa petition for my spouse?
A3: Yes, you can file the petition. In evaluating the petition, as a general matter, USCIS looks to the law of the place where the marriage took place when determining whether it is valid for immigration law purposes. That general rule is subject to some limited exceptions under which federal immigration agencies historically have considered the law of the state of residence in addition to the law of the state of celebration of the marriage. Whether those exceptions apply may depend on individual, fact-specific circumstances. If necessary, we may provide further guidance on this question going forward.

Applying for Benefits

New Applications and Petitions:

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Q4. Do I have to wait until USCIS issues new regulations, guidance or forms to apply for benefits based upon the Supreme Court decision in *Windsor*?

A4. No. You may apply right away for benefits for which you believe you are eligible.

Previously Submitted Applications and Petitions:

Q5. My Form I-130, or other petition or application, was previously denied solely because of DOMA. What should I do?

A5. USCIS will reopen those petitions or applications that were denied solely because of DOMA section 3. If such a case is known to us or brought to our attention, USCIS will reconsider its prior decision, as well as reopen associated applications to the extent they were also denied as a result of the denial of the Form I-130 (such as concurrently filed Forms I-485).

- USCIS will make a concerted effort to identify denials of I-130 petitions that occurred on the basis of DOMA section 3 after February 23, 2011. USCIS will also make a concerted effort to notify you (the petitioner), at your last known address, of the reopening and request updated information in support of your petition.
- To alert USCIS of an I-130 petition that you believe falls within this category, USCIS recommends that you send an e-mail from an account that can receive replies to USCIS at USCIS-626@uscis.dhs.gov stating that you have a pending petition. USCIS will reply to that message with follow-up questions as necessary to update your petition for processing. (DHS has sought to keep track of DOMA denials that occurred after the President determined not to defend Section 3 of DOMA on February 23, 2011, although to ensure that DHS is aware of your denial, please feel free to alert USCIS if you believe your application falls within this category.)
- For denials of I-130 petitions that occurred prior to February 23, 2011, you must notify USCIS by March 31, 2014, in order for USCIS to act on its own to reopen your I-130 petition. Please notify USCIS by sending an e-mail to USCIS at USCIS-626@uscis.dhs.gov and noting that you believe that your petition was denied on the basis of DOMA section 3.

Once your I-130 petition is reopened, it will be considered anew—without regard to DOMA section 3—based upon the information previously submitted and any new information provided. USCIS will also concurrently reopen associated applications as may be necessary to the extent they also were denied as a result of the denial of the I-130 petition (such as concurrently filed Form I-485 applications).

Additionally, if your work authorization was denied or revoked based upon the denial of the Form I-485, the denial or revocation will be concurrently reconsidered, and a new Employment Authorization Document issued, to the extent necessary. If a decision cannot be rendered immediately on a reopened adjustment of status application, USCIS will either (1) immediately process any pending or denied application for employment authorization or (2) reopen and approve any previously revoked application for employment authorization. If USCIS has already obtained the applicant's biometric information at an Application Support Center (ASC), a new Employment Authorization Document (EAD) will be produced and delivered without any further action by the applicant. In cases where USCIS has not yet obtained the required biometric information, the applicant will be scheduled for an ASC appointment.

- If another type of petition or application (other than an I-130 petition or associated application) was denied based solely upon DOMA section 3, please notify USCIS by March 31, 2014, by sending an e-mail to USCIS at USCIS-626@uscis.dhs.gov as directed above. USCIS will

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promptly consider whether reopening of that petition or application is appropriate under the law and the circumstances presented.

No fee will be required to request USCIS to consider reopening your petition or application pursuant to this procedure. In the alternative to this procedure, you may file a new petition or application to the extent provided by law and according to the form instructions including payment of applicable fees as directed.

Changes in Eligibility Based on Same-Sex Marriage

Q6. What about immigration benefits other than for immediate relatives, family-preference immigrants, and fiancés or fiancées? In cases where the immigration laws condition the benefit on the existence of a "marriage" or on one's status as a "spouse," will same-sex marriages qualify as marriages for purposes of these benefits?
A6. Yes. Under the U.S. immigration laws, eligibility for a wide range of benefits depends on the meanings of the terms "marriage" or "spouse." Examples include (but are not limited to) an alien who seeks to qualify as a spouse accompanying or following to join a family-sponsored immigrant, an employment-based immigrant, certain subcategories of nonimmigrants, or an alien who has been granted refugee status or asylum. In all of these cases, a same-sex marriage will be treated exactly the same as an opposite-sex marriage.

Q7. If I am seeking admission under a program that requires me to be a "child," a "son or daughter," a "parent," or a "brother or sister" of a U.S. citizen or of a lawful permanent resident, could a same-sex marriage affect my eligibility?
A7. There are some situations in which either the individual's own marriage, or that of his or her parents, can affect whether the individual will qualify as a "child," a "son or daughter," a "parent," or a "brother or sister" of a U.S. citizen or of a lawful permanent resident. In these cases, same-sex marriages will be treated exactly the same as opposite-sex marriages.

Residency Requirements

Q8. Can same-sex marriages, like opposite-sex marriages, reduce the residence period required for naturalization?
A8. Yes. As a general matter, naturalization requires five years of residence in the United States following admission as a lawful permanent resident. But, according to the immigration laws, naturalization is available after a required residence period of three years, if during that three year period you have been living in "marital union" with a U.S. citizen "spouse" and your spouse has been a United States citizen. For this purpose, same-sex marriages will be treated exactly the same as opposite-sex marriages.

Inadmissibility Waivers

Q9. I know that the immigration laws allow discretionary waivers of certain inadmissibility grounds under certain circumstances. For some of those waivers, the person has to be the "spouse" or other family member of a U.S. citizen or of a lawful permanent resident. In cases where the required family relationship depends on whether the individual or the individual's parents meet the definition of "spouse," will same-sex marriages count for that purpose?

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A9. Yes. Whenever the immigration laws condition eligibility for a waiver on the existence of a "marriage" or status as a "spouse," same-sex marriages will be treated exactly the same as opposite-sex marriages.

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Plug-ins

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