

Same Sex Marriages and Immigration

The Law:

The Defense of Marriage Act (DOMA) is a federal law which defines marriage as a “legal union between one man and one woman.” The law states that this definition of marriage must be used to determine the meaning of any Act of Congress, which includes the interpretation of immigration laws.

Based on this definition, gay, same-sex couples have traditionally not been allowed to file a Petition for an Alien Relative (an [I-130 application](#)) for their non-citizen spouse because their marriage was not recognized by the federal government. If same-sex couples attempted to petition for their spouse, the immigration officials relied on section 3 of the DOMA to deny the petition.

What Changed:

Six states have legalized same-sex marriages since DOMA was originally passed in 1996. In those states, same-sex couples can get married, but the [U.S. Citizen](#) spouse cannot sponsor or petition for the non-citizen spouse to acquire permanent residence or a [green card](#) based on the marriage.

On February 23, 2011, Attorney General Eric Holder declared that section 3 of the DOMA was unconstitutional and that the Department of Justice would no longer defend the DOMA against constitutional challenges. This change is particularly important to same-sex couples where one spouse is not a U.S. Citizen. That is because immigration courts and the Board of Immigration Appeals (unlike ordinary federal courts which are part of the federal judiciary) are part of the Department of Justice – the same department which just declared DOMA as unconstitutional.

Impact on Actual Immigration Cases:

Several immigration cases have arisen since the Attorney General declared the DOMA unconstitutional in which the [Immigration Court](#) has ordered a stay of removal or a continuance of a deportation proceeding where the U.S. Citizen spouse has petitioned for his or her alien spouse to stay in the U.S. based upon a lawful same-sex marriage recognized by their state.

If you are in a same-sex relationship marriage and your partner is not a U.S. citizen, it may be in your best interest immediately file a petition for your alien spouse to become a lawful permanent resident.

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