

“It’s all the Same for Same-Sex Spouse Immigration Applications” by Adam Edward Rothwell, Esq.

As most people who follow the news (more or less immigration news) know, one year ago the US Supreme Court struck a portion of the US Defense of Marriage Act (DOMA), which mandated a marriage must be between a man and a woman. There have been far-reaching changes in rules, laws as well as regulations based on this wise decision of the US Supreme Court to strike down DOMA. And even a year later rules are still evolving based on this decision. However, one of the most immediate results was that same sex spouses began to receive the same immigration benefits as spouses of different genders. Since immigration law is federal, the US Supreme Court decision to strike down portions of DOMA almost immediately provided equal treatment under immigration laws to same sex married couples.

A question I often receive from same sex married couples interested in submitting an immigration application is, “How much harder will this application be compared to the same application submitted by a couple of different genders?” Similarly I often get asked, “How much more closely will our marriage be scrutinized than a similar application submitted by a married couple of different genders?” And other times I just get asked, “Does this even really have a chance?” I respond by saying, “There will be no difference in how your application is either judged or questioned as compared to the same application by a couple of different genders.” Still most of the time it seems like my response is not entirely believed, which I am able to appreciate.

With such a long history of prejudice against couples of the same gender, concerns understandably exist among same sex married couples that their relationships will be closely scrutinized in immigration applications. Yet, the law requires equal treatment for immigration applications among same sex married couples, which means no difference in adjudicating applications from married couples of different genders. Moreover, immigration officers are highly concerned with and repeatedly trained on ensuring fair treatment among different populations. Of course equal treatment requires and actual, valid marriage.

Just like for married couples of different genders, there must be an actual marriage license between the same sex couple. Even a very long-term relationship without an actual marriage between a same sex couple does not allow for sponsorship other than possibly a fiancé visa. A marriage license is required, as US Immigration generally does not recognize common law marriages across the board.

Adam Edward Rothwell is a US Immigration lawyer based in Baltimore, Maryland. He may be followed on Twitter at: USAImmigration