

## First comes love, then comes marriage, then comes Conditional Permanent Residency

An foreign national who marries a U.S. citizen, and is otherwise eligible, may apply to adjust their status to lawful permanent residency (“green card”). If married for less than two years at the time the case is approved, the foreign national will receive “conditional permanent residency”. This type of residency expires two years after the initial grant; a request to remove the conditions must be made with Citizenship and Immigration Services within ninety days prior to expiration. This request is made by filing form I-751. If the couple is still married, the petition is filed jointly. Problems may arise, however, when one divorces during the period of conditional residency or when one’s spouse refuses to participate in the joint petition despite still being married..

If one is divorced at the time when the petition to remove conditional residency is due, one may not submit a joint petition. Rather, the petition is to be filed and a good faith marriage waiver requested. If you are married when first filing the joint petition, but subsequently obtain a final decree of divorce while the petition is pending, Citizenship and Immigration Services must be notified of the changed circumstances and request for a good faith marriage waiver likewise submitted.

Government memorandum directly on point address the situation pertaining to pending divorces and an impending expiration of conditional residency. In the event the divorce is not yet final, one may allow the conditional residency to expire. Upon receipt of the final judgment of dissolution, one may then file an untimely petition to remove the conditions on residency which would be treated as a motion to reopen and ultimately adjudicated as the case mentioned above via a good faith marriage waiver.

In all cases, one must prove that the marriage was valid at its inception and not entered into for the purpose of circumventing immigration laws. In the event that one’s petition to remove the conditions on residency is ultimately denied, said petition may be renewed in removal proceedings. In the event that the petition to remove the conditions on residency finds it way before an immigration judge, it stands to reason that additional evidence and ideally witness testimony be presented in a competent fashion.

Ultimately, upon the successful prosecution of a petition to remove the conditions upon residence, one receives a ten year lawful permanent resident card. In the event the parties are still married, the lawful resident spouse may apply for U.S. citizenship three years from the date the initial conditional residency was approved. If the parties are now divorced or the ten year card was the product of a good faith marriage waiver, the resident must wait the full five years from receipt of the initial green card to apply for U.S. citizenship.