

TRANSGENDER MARRIAGE BASED IMMIGRATION

As of the writing of this article, U.S. Immigration law does not recognize [gay marriages](#) for immigration purposes. However, transgender marriages are viewed differently.

A noncitizen who marries a [United States citizen](#) (“USC”) or [lawful permanent resident](#) (“LPR”) is eligible for adjustment of status. To do so, the USC or LPR spouse must file a petition on behalf of the noncitizen spouse. See INA §§ 201(b)(2)(A)(i), 204(a)(1)(A)(ii). Difficulties may arise, however, in the case of transgender marriages.

Are marriages involving a transgender spouse recognized for immigration purposes?

The Board of Immigration Appeals (“BIA”) has recognized the grant of immigration benefits to a marriage involving a post-operative transsexual. See *Matter of Lovo-Lara*, 23 I&N Dec. 746 (BIA 2005). In this case, a USC transgender woman married a noncitizen male. The woman was a post-operative transgender individual and obtained an updated birth certificate from North Carolina after her reassignment surgery. The BIA set forth several requirements in order to qualify the noncitizen for immigration benefits:

1. State law must recognize the change in gender;
2. State law must recognize the marriage as valid;
3. The marriage must qualify for immigration benefits under the INA.

Recently, the BIA issued another decision on this matter, dated February 1, 2012. The decision has not been published as of the time of writing. The BIA recognized for immigration benefits a marriage between a male USC petitioner and a female transgender noncitizen spouse. The noncitizen spouse had undergone sexual reassignment surgery, but was unable to change her listed gender on her Thailand birth certificate. The couple was married in California but resided in Missouri. The BIA chose to recognize the marriage and grant immigration benefits because the couple met the following qualifications:

1. The state of marriage had a procedure in place to recognize the postoperative gender;
2. The state of residence had a procedure in place to recognize the postoperative gender;
3. State law recognized the marriage as valid;
4. The marriage qualified for immigration benefits under the INA.

How can one show that a marriage with a transgender individual qualifies for immigration benefits?

First, it is necessary to show that the state of residence has recognized the change in gender. This can be shown through an updated birth certificate, a gender-accurate driver’s license, or a gender-accurate state identity card. It may also be necessary to research state laws related to this issue. If the marriage took place in a state different from the current state of residence, it will also be necessary to show that the state of marriage recognizes the change in gender.

Second, it is necessary to show that the marriage is valid and recognized under state law. This can be shown through a valid marriage certificate and evidence of state laws that recognize marriages involving transgender individuals.

It is important to note that visa applications for immigration benefits derived from marriage involving a transgender spouse are most likely to be successful when the spouse has undergone sexual reassignment surgery. Both cases discussed above involve a post-operative transgender spouse. When filing the application, it is best to include verification of the medical steps taken to complete the transition. This may be shown through an expert medical opinion.

Finally, as with all [marriage-based immigrant petitions](#), it is necessary to show that the marriage is bona fide and was *not* entered into for the purpose of circumventing immigration laws.

Please note that the facts of each case are different, and the outcomes in particular matters may vary. If you are currently married to a post-operative transgender spouse and believe you may be eligible for immigration benefits based on this marriage, please contact Cundy and Martin, L.L.C. to discuss your case.

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