



FEDERAL IMMIGRATION BENEFITS NOW AVAILABLE TO SAME-SEX MARRIED COUPLES

The Defense of Marriage Act

Section 3 of the Defense of Marriage Act (DOMA) defined marriage as "a legal union between one man and one woman as husband and wife." Consequently, federal benefits were only available to **opposite-sex** married couples. Since DOMA was signed into law in 1996, lawfully married same-sex couples have not been able to avail themselves of the same federal immigration benefits available to opposite-sex married couples.

This changed on June 26, 2013.

United States v. Windsor

In a 5-4 decision issued by the Supreme Court in *United States v. Windsor*, the Court struck down Section 3 of DOMA, holding that it was unconstitutional. Justice Kennedy, writing for the majority, stated that the law violated the Fifth Amendment's basic due process and equal protection principles applicable to the federal government. The majority noted that DOMA was depriving some couples of the same rights and responsibilities that were afforded to other couples although both sets of couples were legally married pursuant to the laws of their states.

Take the following example. If a U.S. citizen legally married a foreign national who had entered the U.S. in a lawful immigration status, that U.S. citizen could sponsor his or her spouse for a green card as an immediate relative, but only if they were an opposite-sex couple. However, where the couple was of the same sex and legally married pursuant to state law, the U.S. citizen was not able to sponsor his or her spouse for a green card as an immediate relative. This scenario also applies to persons attempting to obtain temporary visas on behalf of their spouses. For example, if someone obtained a temporary visa to enter the U.S. as a student, that person's same-sex spouse could not enter as a derivative, whereas an opposite-sex spouse could.



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This treatment left same-sex couples and families with fewer U.S. immigration options than heterosexuals.

By invalidating Section 3 of DOMA, the Supreme Court has paved the way for same-sex couples to take advantage of federal immigration benefits as long as the couples are legally married. As of today, 13 states and the District of Columbia allow same-sex marriage.

If you and your spouse are a legally married same-sex couple, you may qualify for an immigration benefit such as:

- Derivative status as the spouse of a non-immigrant visa holder;
- Permanent resident (green card) status as the immediate relative spouse of a U.S. citizen;
- Derivative status as the spouse of an employment-based green card applicant; or
- Derivative asylee or refugee benefits.

For more information about whether you may qualify for a federal immigration benefit, please contact one of the attorneys at Orner & O'Brien. They can be reached at info@ornero'Brien.com or directly as follows:

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Lynn O'Brien is one of the founding partners of Orner & O'Brien, LLC. The firm is located in Bethesda, Maryland just outside of Washington, DC. Lynn began working in the field of US immigration in 1997. She was also the founder and Past Chair of the Immigration Section of the Maryland State Bar Association and has worked as a contractor for the United States Citizenship & Immigration Services (USCIS). For more information about her or the firm, please visit the firm's website at <http://www.ornero'Brien.com>