

WHAT HAPPENS WHEN I MARRY?

Important Facts about Family-Based Immigration

Ana is a citizen of El Salvador. She entered the United States on a tourist visa. Two months later, she married John, who is a U.S. citizen. Ana and John want a “green card” for Ana. To win their case, they must prove several things. 1. That Ana entered lawfully; 2. That when she entered she did not intend to stay in the United States; 3. That John is a U.S. citizen; 4. That both Ana and John were legally eligible to marry; 5. That they are now married; and, 6. That the marriage is bona fide (a “real” marriage, not marriage just to get a green card). Once Ana and John file the proper forms, Ana should be able to obtain a green card. Ana can stay in the United States with John during this process, which takes from 12 to 18 months.

David is a U.S. citizen. His girlfriend, Patricia, lives in Mexico. They want to get married and live in the United States. David has three choices. First, he can apply for a fiancé visa (a K visa) for Patricia. When approved, Patricia will be interviewed at the U.S. Consulate in Ciudad Juarez, Mexico, where she must prove that she qualifies to enter the United States as a fiancé. Patricia must remain in Mexico during approval, about 8 to 12 months. Then Patricia can enter the United States and marry David within 90 days of her entry. After the marriage, they will file forms to apply for Patricia’s “green card.”

David has two other choices, which require that he marry Patricia in Mexico. In the slower process, David and Patricia marry in Mexico. Then David files documents to prove the mar-

riage is real. When approved, David and Patricia must then prove that Patricia qualifies to enter the United States. If approved, Patricia will receive a green card. She can now live with David in the United States. Patricia must stay in Mexico through the process, about 12 to 18 months.

David’s third choice is faster. David marries Patricia in Mexico. Then David files documents to prove the marriage is real. David files for a special visa (K-3) that allows Patricia to enter the United States and stay here while her case is decided. Once approved, David and Patricia must prove: 1. That David is a U.S. citizen; 2. That they were eligible to marry; 3. That they are now married; 4. That the marriage is bona fide; and, 5. That Patricia is qualified to enter the United States. If approved, she can enter the United States and remain here until a green card is approved. Patricia must stay in Mexico during approval of the K-3 visa, about 8 to 12 months.

Elena is in the U.S. without papers – she is undocumented, and did not enter lawfully. She has been here 3 years. She married Tom, a U.S. citizen. Tom and Elena want to get a green card for Elena so she is here legally. Under the law, Elena must leave the United States in order to obtain a green card. There is no law that will allow Elena to stay. Tom can file documents with US CIS to prove that the marriage is real. Once approved, the U.S. consulate in Elena’s country will interview them. They must prove: 1. That Tom is a U.S. citizen; 2. That

both are eligible to marry; 3. That they are now married; 4. That the marriage is bona fide; and, 5. That Elena is qualified to enter the United States. But there is a problem: the law says that because Elena was in the United States illegally more than a year, she cannot enter the United States for 10 years, unless she can prove that it will cause extreme hardship to her husband. This requires an application for special permission called a “waiver.” Once everything is approved, including the waiver, Elena can enter the United States with a green card. During this process, Elena must leave the United States and stay in her country 12 to 24 months or longer.

NOTE: This article is offered for informational purposes only. It does not constitute legal advice. If you have legal questions regarding immigration issues, please consult with an attorney.

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