

# Legal Articles

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### **Fear of Fake Marriages Making Permanent Green Cards Difficult to Obtain**

by: **Heather L. Poole, Attorney at Law**

The quickie green card marriage may not be so easy anymore. CIS is limiting green card issuance that can directly impact the immigrant and his or her sponsor's future. Even if an immigrant is married to a U.S. citizen, if the marriage is less than two years old at the time the green card interview (adjustment of status interview) takes place, U.S. Citizenship & Immigration Services ("CIS", previously known as INS) will only grant the immigrant a two year green card.

This "conditional green card" will terminate in two years if the couple cannot prove that they are still living together as husband and wife. This requirement was created in 1986 when Congress believed that the only way to counteract fake or sham marriages was to require ongoing proof that the couple still lived together and the marriage was not a mere economic or business transaction.

To convert the conditional (2 year) green card into a permanent green card, the U.S. citizen or legal permanent resident sponsoring spouse and the conditional green card-holding spouse must together to petition to have the condition removed, or else the green card will expire and lawful permanent residency status will be terminated.

This petition must be filed within the 3 month period before the green card expires.

In reality, though, the two year expiration can potentially cause quite a few problems for marriages that were real when the couple wed but are now leading to divorce due to domestic violence, adultery, or other "irreconcilable differences" near the time the immigrant's green card is expiring. By requiring the cooperation of the petitioning US citizen, in most circumstances, to sign and file to have the condition taken off, the process creates a power-struggle between a feuding couple and worse, gives more power over the immigrant to an abusive U.S. citizen spouse.

There are limited exceptions available to an immigrant when his or her U.S. citizen spouse will not cooperate or help the immigrant file to have the condition taken off of the green card. If a couple separates or divorces at any time after the green card is first issued, it is unlikely that the originally sponsoring U.S. citizen or LPR spouse will cooperate in helping the immigrant spouse release the condition on the green card for a number of reasons. If this happens, the immigrant may be able to apply to have the condition removed from his or her own green card by applying for a waiver. The waiver allows the immigrant to apply to remove the condition on his or her green card without the assistance of their spouse. There are currently three different ways or grounds to apply for a waiver:

- (1) good faith or bona fide marriage ground (if your divorce is final at the time of filing);
- (2) extreme hardship (to the immigrant if deported to their original country); or
- (3) extreme cruelty (proving that the immigrant suffered physical, emotional, or financial abuse from their spouse)

CIS allows an immigrant to apply for any number of these grounds on the same petition. Waivers are generally more difficult to have approved. If an immigrant files a waiver, the current policy is that an interview will be required. If you file a joint petition and depending on the evidence submitted, an interview may not be required.

If an immigrant fails to file for either a waiver or to file a joint petition with the spouse within the 90 day period, the green card will be terminated.

Once a CIS receipt notice is received from CIS, the immigrant will have proof that his or her green card is still valid for another year or until the case is decided, whichever comes first. If the case is still not decided within a year, the green card will be

extended for another year and will be extended on an annual basis until the case is decided.

A remaining concern for many immigrants is what happens to their eligibility to apply for U.S. citizenship, especially if the immigrant does not stay with their spouse and instead files a waiver petition on their own. If the immigrant receives their green card through marriage and is still living with their husband or wife 3 years after the green card is initially issued, the immigrant will be eligible to apply for U.S. citizenship, even if the joint petition to remove the condition on the two year green card has not yet been decided. Actually filing for U.S. citizenship will speed up the process of CIS deciding the conditional residency issue, as conditional residency will no longer be an issue if a person has already received U.S. citizenship.

If an immigrant is applying for a waiver because he or she is divorced or for any other reason is not living with the spouse anymore, then the immigrant will be eligible for citizenship after 5 years in lawful permanent residency status. The one exception to this is if a waiver is approved based on the "extreme cruelty" ground, which requires the immigrant to show that s/he suffered physical, financial, and/or psychological abuse from their spouse. If approved on this ground, the immigrant will be eligible to apply for U.S. citizenship in 3 years, even if not living with the abusive U.S. citizen spouse.

Before deciding whether to stay in a bad marriage, an immigrant must address their available options under both the waiver provisions and the joint petition provisions of the Immigration and Nationality Act. An immigration lawyer may be in the best position to help an immigrant flush out the potential advantages and disadvantages of choosing a particular route and many consultations with immigration attorneys throughout the U.S. are given free of charge. The most important concern remains for immigrants to ensure that a close eye be kept on the expiration date of their conditional green card and not let it expire before seeking legal assistance. To learn more about conditional green cards, visit the U.S. Citizenship & Immigration Services' website at [www.uscis.gov](http://www.uscis.gov), for a general overview.

### **About The Author**

Attorney Heather L. Poole is an expert in family-based immigration and U.S. Citizenship, located in Pasadena, California. She is a published national author on family-immigration issues, frequent lecturer on marriage-based immigration, and member of the American Immigration Lawyers Association & National Network to End Violence Against Immigrant Women. For more information, visit [www.humanrightsattorney.com](http://www.humanrightsattorney.com).

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