

The Supreme Court victory in *United States v. Windsor* striking down the discriminatory federal Defense of Marriage Act (DOMA) affirms that all loving and committed couples who are married deserve equal legal respect and treatment from the federal government. The demise of DOMA marks a turning point in how the United States government treats the relationships of married same-sex couples for federal programs that are linked to being married. At the same time, a turning point is part of a longer journey, not the end of the road. There is much work ahead before same-sex couples living across the nation can enjoy all the same protections as their different-sex counterparts.

Keep in Mind:

- x The Supreme Court's ruling in *Windsor* applies only to the federal government. It does not change discriminatory state laws excluding same-sex couples from state-conferred marriage rights.
 - x Federal agencies—large bureaucracies—may need and take some time to change forms, implement procedures, train personnel, and efficiently incorporate same-sex couples into the spousal-based system.
 - x Until same-sex couples can marry in every state in the nation, there will be uncertainty about the extent to which same-sex spouses will receive federal marital-based protections nationwide. For federal programs that assess marital status based on the law of a state that does not respect marriages of same-sex couples, those state laws will likely pose obstacles for legally married couples and surviving spouses in accessing federal protections and responsibilities.
- ~~x Securing fair access to federal protections that come with marriage for all same-sex couples in the nation will take some time and work. For more information, see [Federal](#)~~

States, whether the non-U.S. citizen partner arrived here after having been inspected by immigration officer or whether the partner entered without inspection. Same-sex couples will also have to meet the general criteria for marriage-based immigration. For general information about the procedure to apply for marriage-based immigration petitions on behalf of foreign spouses who are inside the U.S., see [Immigration Equality's content of status page](#) (<http://immigrationequality.org/issues/transgender/adjustment-of-status-procedural-steps/>), and for foreign spouses who are outside the U.S., see [Immigration Equality's consular processing page](#) (<http://immigrationequality.org/issues/transgender/consular-processing-procedural-steps/>).

The following outlines some common circumstances for same-sex binational couples.

This series of fact sheets produced together by:

American Civil Liberties Union | Center for American Progress | Family Equality Council | Freedom to Marry | Gay & Lesbian Advocates & Defenders
Human Rights Campaign | Immigration Equality | Lambda Legal | National Center for Lesbian Rights | National Gay and Lesbian Task Force | OutServe-SLDN

WE ARE BOTH IN THE UNITED STATES

My spouse and I married in a marriage equality state and live in a state that recognizes our marriage. Can I file for her?

Yes, your application should be treated exactly as the application of a different-sex couple.

My spouse and I married in a marriage equality state but live in a state that does not recognize our marriage. Can I still file for him?

U.S. Citizenship and Immigration Services (USCIS) focuses on the place where the marriage was entered (the place of celebration), not the place where one spouse or both spouses live. As long as the marriage was validly entered into under the laws of the state or country of celebration, it should not matter where you currently reside.

If my partner and I entered into a civil union (for example in New Jersey) or a Domestic Partnership (for example in California) with all the rights of marriage, but are not actually married, can I sponsor her for a green card?

The answer to this is not entirely clear, and we hope to have guidance on this soon. If it is possible for you and your partner to marry even if you have to travel to a different state to do so, you may be better off marrying because you could then feel more secure in filing right away without having to wait for further guidance.

OTHER CONSIDERATIONS:

FOR IMMIGRANTS WHO ARE IN LAWFUL IMMIGRATION STATUS

I am in the U.S. legally on a non-immigrant visa that allows me to have the intention to stay in the U.S. (for example an H1B or L1 visa). I am married to my spouse; can she file a green card application for me?

Yes, as long as the two of you are lawfully married, and you meet the other general immigration marriage requirements, you should be able to apply to adjust status to lawful permanent resident and process your paperwork from within the U.S. See immigrationequality.org/issues/transgender/adjustment-of-status-procedural-steps/

I am in the United States on a non-immigrant visa (for example a tourist or student visa) that required me to demonstrate that I did not have the intent to immigrate to the U.S. Is it a problem for me to marry my partner and have her file a marriage-based green card application?

Maybe. As with many areas of immigration law, this is an area that will involve a fact-intensive inquiry by the USCIS. It is considered acceptable to enter the U.S. with the intention to remain here temporarily and then have your intent change as circumstances in your life change. For example, a university student might meet someone after attending school here and

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AFTER DOWN WHAT IT MEANS FOR MY ORATION



How soon after I get residence can I apply to become a U.S. citizen?

While the general rule is that an individual must be a lawful permanent resident for five years before applying to become a citizen, spouses of U.S. citizens can apply three years after obtaining their green card, provided they remain married and living together as a couple.



WILL THINGS WE SAID OR DID IN THE PAST AFFECT OUR FUTURE APPLICATION?

I have been in the U.S. for three years on a student visa. I live with my partner and he provides financial support for me, but I have always indicated on my immigration papers that he is a "family friend." Will the fact that I never disclosed that he's my partner before make it harder for him to sponsor me for a green card now?

The answer to this may depend on the specific facts of your case. We are advocating that USCIS take a fair and reasonable approach to issues such as this, given the systemic discrimination that LGBT families have faced under U.S. law. If you have any fear that USCIS could find fraud in your case, you should consult with an immigration attorney before filing your application.

INFORMATION FOR DUAL FOREIGN NATIONAL COUPLES

My spouse and I are both citizens of a foreign country. I have been offered a skilled worker visa (for example an H-1B) to work in the U.S. Can my spouse come with me while I'm in the U.S.?

Yes, she will qualify for an H-4 "derivative" visa, which means your spouse can accompany you for the duration of your visa. However, as with different-sex spouses, your spouse will not be entitled to work while in the U.S.

Where can I get more information?

The Immigration Equality website immigrationequality.org/ has a great deal of general information on U.S. immigration law and its application to LGBT people. If the website does not answer your question, you can [submit an inquiry immigrationequality.org/contact-us](http://immigrationequality.org/contact-us) online to the Immigration Equality legal staff. You can also consult with the legal organizations below.

