

COMMUNITY

JOURNAL

USCIS provides new guidance for marriage cases

YOUR IMMIGRATION SOLUTION



ATTY. ROBERT REEVES & JOSEPH I. ELIAS

continues to exist and that it was not entered into for the purposes of obtaining an immigration benefit. Failure to file the petition to remove the condition will result in termination of resident status and typically leads to deportation proceedings. Again, these are strong disincentives to enter into a sham marriage.

While the immigration laws and regulations are meant to ensure only valid marriages result in full immigration benefits, a rigid requirement for a joint petition for removal of condition does not fit every circum-

“An immigrant found to have entered into a sham marriage in order to obtain immigration benefits is banned for life from being petitioned as an immigrant. This can also result in criminal convictions for both parties.”

stance. For example, an immigrant spouse who is physically or mentally abused by the US citizen spouse should not be expected to remain in a dangerous marriage in order to file a joint petition. There are also couples who entered into marriages in good faith, but for whatever reason, the marriage does not work out. They end up separating or divorcing before the two years are up. Immigration law recognizes these circumstances and allows for waivers for a joint filing. For those couples who have divorced, the immigrant spouse may apply for the removal of the condition with a good faith marriage waiver.

In many states, finalizing a divorce takes several months.

Many conditional residents who married in good faith, have found themselves in the midst of a divorce without a final decree at the time the petition to remove the condition was due. Until recently this meant that they were required to file two petitions. The first was a joint petition, and the second a good faith marriage waiver when the divorce was finalized. The USCIS recently forwarded guidance to its adjudicators involving parties that are divorcing. Adjudicators are to request additional evidence to resolve issues and for the parties to provide a final divorce decree. The immigrant will be provided an 87-day response time. Once the divorce is received, the basis for removal of conditions will be converted to that of a good faith marriage waiver and the immigrant will not need to file a new petition.

This is a significant change that will result in faster processing times and save the duplication of efforts and fees. The finality in a decision to remove the condition will allow the immigrant to enjoy the peace of mind that comes with the full benefits of permanent resident status.

Atty. Reeves has represented clients in numerous landmark immigration cases that have set new policies regarding INS action and immigrants' rights. His offices are located in Pasadena, San Francisco, Las Vegas and Makati City. Telephone: (800) 795-8009 E-mail: immigration@rreeves.com Website: www.rreeves.com

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