

## Immigration Benefits for Same Sex Marriage

**Q 1: How does Supreme Court's recent ruling on same sex marriage impact immigration law?**

A 1: On June 26, 2013 the U.S. Supreme Court held that the Defense of Marriage Act (DOMA) is unconstitutional. The court's rejection of DOMA has wide-ranging implications and means that visa applications that are based on a same-sex marriage will be adjudicated in the same way as applications for opposite gender spouse.

**Q 2: I am a U.S. citizen married to a same sex foreign national. Can I now file an I-130 family based petition to sponsor my spouse for a green card?**

A 2: Yes, you can file the I-130 Petition to sponsor your spouse for a green card. Your eligibility to petition for your spouse will be determined in the same way as Petitions for opposite gender spouses.

**Q 3: I am a U.S. citizen. My same sex foreign national spouse and I were married in Vermont, but now we live in Florida. Can I file an Immigrant Visa Petition for my spouse?**

A 3: Yes, you can file an Immigrant Visa Petition on behalf of your same sex spouse. Since your marriage took place in Vermont (a state where same sex marriages are recognized), you can request the same benefits that a foreign spouse of opposite sex is entitled to. The law of the place where the marriage was celebrated (in your case Vermont) determines whether the marriage is legally valid for immigration purposes.

**Q 4: I am a U.S. citizen who is engaged to be married to a foreign national of the same sex. We cannot marry in my fiancé(e) country as that country does not recognize same sex marriage. What are our options? Can we apply for a fiancé(e) (K) visa?**

A 4: You may file Form I-129F, and apply for a fiancé(e) (K) visa. As long as all other immigration requirements are met, your fiancé(e) may be allowed to enter the United States for the purposes of getting married to you in 90 days.

**Q 5: I am working in the United States on H-1B visa and married to a foreign national of the same sex in a country that recognizes same sex marriage. Can I apply for a dependent visa for my spouse?**

A 5: Yes, you can file for an H-4 Dependent visa application for your spouse. A lot of people do not realize that benefits available post-DOMA are not limited to green cards. Same-sex spouses may be eligible to apply for dependent visas (or dependent status, for individuals who are already in the United States in some other valid status), such as H-4, L-2, J-2 and F-2.