

THE IMMIGRATION EDGE

Marriage Considerations for Foreign Nationals Awaiting a Green Card

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It's timely on Valentine's Day to remind foreign nationals in H-1B and other nonimmigrant classifications who have found someone to love and to marry, that the timing of *when* they choose to marry may affect the immigration status of their prospective spouse. The considerations are particularly important for those with an application for adjustment of status to permanent residence pending, or those who plan to file one. Due to immigration quotas and anomalies of immigration law, marrying before receiving a green card can enable the spouse to join in the process, but waiting until after receiving a green card can prevent the spouse from joining the applicant in the United States for years.

The reason is that after a foreign national becomes a permanent resident, his/her spouse will be subject to the family-based preference category that is presently backed up nearly five years or more, depending upon the country of citizenship, as indicated in the State Department's [Visa Bulletin](http://travel.state.gov/visa/frvi/bulletin/bulletin_3953.html) (http://travel.state.gov/visa/frvi/bulletin/bulletin_3953.html).

One note of warning: The Department of Homeland Security actively prosecutes cases in which it suspects couples married for the purpose of obtaining immigration benefits, and not because two people would like to spend their lives together.

Following are some scenarios about the impact of the process on the foreign national spouse:

- If a person with H-1B status as well as application for adjustment of status pending ("AOS" applicant) marries a foreign national who is living outside the U.S. and is not a U.S. permanent resident, and following are the possible implications:
 - Marriage occurs *before* adjustment (green card application) is approved. The foreign spouse may enter the U.S. in dependent non-immigrant visa category, H-4 status. The foreign spouse may interfile an application with those pending for the AOS applicant to notify the Department of Homeland Security's agency U.S. Citizenship & Immigration Services ("USCIS") that the spouse is joining the process. Even if the adjustment of status application is delayed due to immigrant visa backlogs or USCIS processing, the spouse (who has entered the U.S. in nonimmigrant status) will be able to reside in the U.S. during this time and may be able to obtain employment

authorization.

- Marriage occurs *after* adjustment of status to permanent resident (green card application) is approved: H-1B/AOS applicant files a petition for immediate relative, but even after the petition is approved, the foreign spouse must wait for backlogs to clear and a visa number to become available in order to enter the U.S. as a permanent resident. There is no absolute preclusion from coming to the U.S. to “visit” the spouse, but attempts would be scrutinized, and opportunities to work in the U.S. would be limited.
- If a person with H-1B status, and no adjustment of status pending, marries foreign national who is a U.S. permanent resident:
 - The permanent resident spouse can sponsor the person with H-1B status for permanent resident status, but the family-based immigration visa quotas apply. The H-1B holder is likely to end up with a green card faster if the employer sponsors the H-1B holder for employment-based permanent resident status, for which the immigrant visa wait times tend to be shorter.

In the spirit of Valentine’s Day, we suggest that if your company’s H-1B or other nonimmigrant employees are considering marrying a person who is not a U.S. citizen or permanent resident, true love may more readily flourish if their intended is admitted to the U.S. as a nonimmigrant, rather than marrying after the H-1B holder becomes a permanent resident, and have their spouse wait years for an immigrant visa to enter the U.S.

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