

Marriage to U.S. Citizen on a Tourist Visa: What You Risk When Applying for a Green Card



Immigration Blog

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There are two ways to complete the journey to lawful permanent resident (LPR) status. Some people apply from within the U.S. and others complete the process at an embassy or consulate abroad. There are timing issues, travel issues, working issues and living arrangements that impact the decision about how this process should be finished.

Of course, many married couples like to live together. It is challenging for a newly married couple to be unable to live together for the period of time it takes for their Immigrant Petition to be adjudicated (18 months) and for their Immigrant Visa Processing to be finished (up to a year). That means the wait could be up to two and a half years or even longer. During this time, the foreign national spouse can visit the U.S., but he or she may be asked to establish visitor status each time he or she wants to enter. For a visitor, generally U.S. Customs and Border Protection (USCBP) expects the foreign national to be spending most of their time outside the U.S., and USCBP may expect that the foreign national's spouse shows significant ties to their home abroad, as a visitor. This may include a lease, evidence of current employment, etc.

For the government, this distinction matters because it is cheaper and generally easier to keep a foreign national out of the U.S. at a port of entry than it is to kick them out through removal proceedings later. The vetting for an LPR is much more rigorous than it is for a visitor, and appropriately so. The benefits are significant for an LPR, and it only makes sense that the U.S. government wants to restrict such status to the qualified. It is far better from the perspective of the U.S. government to keep someone outside the U.S. to undergo the vetting process abroad than to have someone in the U.S. with multiple layers of due process while the foreign national fights to remain.

Sometimes a foreign national will decide to enter the U.S. as a visitor and remain for the purpose of filing for their LPR status through adjustment of status, with their U.S. citizen spouse as the sponsor. In this process, the applicant gets stuck in the U.S. with no ability to leave and re-enter for many months. He or she can get an open work permit while the LPR process continues. The problem with this course of action is that when the applicant files for LPR status, his or her entry as a visitor may be seen as fraud. Especially if the USCBP officer at the port of entry asked the applicant about the purpose of the trip or questioned whether the applicant planned to marry or file for adjustment of status on this trip. If USCBP records these responses and they turn out not to be accurate, or if the LPR status adjudicator (from U.S. Citizenship and Immigration Services) elicits the information of a ruse, or plan to deceive when the applicant entered the U.S., he or she may be charged with immigrant fraud, preventing the issuance of LPR status. Forever. Now that may put a wrinkle in the marriage!

Over time, the U.S. government has had various rules to assist officers in handling these situations. The 30/60 day rule for adjustment of status was for visitors who married or filed for adjustment of status within 30 days of entry or 60 days of entry. Within 30 days of entry, there was a rebuttable presumption that fraud had been committed upon entry based on preconceived intent. Within 60 days, there was still a concern, but no rebuttable presumption. Some attorneys continue to abide by this rule for clients, to be safe.

As an advocate for my clients, I am often asked about these processes or told about situations where a visitor adjusted their status and was not charged with fraud. While I have seen these situations resolve successfully in the past, I also cannot recommend that a foreign national enter the U.S. as a visitor with a plan to file for adjustment of status subsequently. The chances of getting caught might not be big, but the consequences of a fraud charge are big. Even life-changing.

If you have questions about adjustment of status, immigrant visa processing or obtaining lawful permanent resident status, please contact Elizabeth M. Klarin (eklarin@lippes.com) or Eileen M. Martin (emartin@lippes.com). The experienced practice team at Lippes Mathias is prepared to assist you as you navigate these issues.

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