

U.S. Visas for Same-Sex Spouses

FAQs for Post-Defense of Marriage Act

Q: How does the Supreme Court's Windsor v. United States decision impact immigration law?

A The Supreme Court has found section 3 of the Defense of Marriage Act (DOMA) unconstitutional. Effective immediately, U.S. embassies and consulates will adjudicate visa applications that are based on a same-sex marriage in the same way that we adjudicate applications for opposite gender spouses. This means that the same sex spouse of a visa applicant coming to the U.S. for any purpose – including work, study, international exchange or as a legal immigrant – will be eligible for a derivative visa. Likewise, stepchildren acquired through same sex marriages can also qualify as beneficiaries or for derivative status.

Q: Do we have to live or intend to live in a state in which same sex marriage is legal in order to qualify for an immigrant or nonimmigrant visa?

A: No. If your marriage is valid in the jurisdiction (U.S. state or foreign country) where it took place, it is valid for immigration purposes. For more information, please review the following page on the United States

[Citizenship and Immigration Service's \(USCIS\) website.](#)

Q: I am in a civil union or domestic partnership; will this be treated the same as a marriage?

A: At this time, only a relationship legally considered to be a marriage in the jurisdiction where it took place establishes eligibility as a spouse for immigration purposes.

Q: 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's country. What are our options? Can we apply for a fiancé K visa?

A. You may file a Form I-129F and apply for a fiancé(e) (K) visa. As long as all other immigration requirements are met, a same-sex engagement may allow your fiancé to enter the United States for the purpose of marriage. For information on adjusting status, please review the following page on [USCIS's website](#):

Nonimmigrant Visas (NIVs)

Q: Can same sex couples now apply for visas in the same classification?

Yes. Starting immediately, same-sex spouses and their children are equally eligible for NIV derivative visas. Same-sex spouses and their children (stepchildren of the primary applicant when the marriage takes place before the child turns 18) can qualify as derivatives where the

law permits issuance of the visa to a spouse or stepchild. In cases where additional documentation has always been required of a spouse applying with a principal applicant, such documentation will also be required in the case of a same-sex spouse (see below).

A: Are there nonimmigrant visa classifications which will require approval of certain documentation before an interview can take place?

Yes. Same-sex spouses and stepchildren (F-2 and M-2) of student (F-1 and M-1) visa applicants will need to obtain an I-20A prior to application. Spouses (J-2s) of exchange visitors (J-1) visa holders will need an approved DS-2019. Finally, same-sex spouses of victims of criminal activity (U-2s) and human trafficking victims (T-2s) will require completed Supplement A to Form I-918 or I-914, respectively, before an officer approves any derivative cases. This additional documentation is also required for opposite gender spouses.

Immigrant Visas

Q: My foreign national spouse has children. Can they also be included with my spouse's case?

Yes, the children of foreign national spouses can be considered "step-children" of the U.S. citizens and can therefore benefit from a petition filed on their behalf in the IR2 category. In other categories, stepchildren acquired through same sex marriage can qualify as beneficiaries (F2A) or for derivative status (F3, F4, E1-E4, or DV). You and your spouse must have married before the child turned 18.