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# IN BRIEF

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## DOMESTIC RELATIONS PRACTICE AND IMMIGRATION LAW

Domestic relations practitioners often confront issues in unfamiliar areas of law. This article presents some of the issues that may arise for immigrant clients and steps to take in dealing with them. When presented with these issues you may want to consult with an experienced immigration practitioner.

### IMMIGRATION STATUS

Under 8 USC §1227(a)(1)(G), INA §237(a)(1)(G), if an alien gains legal residency through marriage and the marriage is terminated through divorce or annulment within two years after the alien gains legal residency, the marriage is presumed to be fraudulent. An alien who enters into a fraudulent marriage is deportable.

If your client is contemplating dissolution:

1. Determine if the client has "conditional residency" status (a two-year status based on marriage to a U.S. citizen). You will need to look at the client's immigration documents to determine what status the client has and when it was acquired.

2. For the client who is converting to full permanent residency status after a divorce or annulment, help that individual prove that the marriage to a U.S. citizen was in "good faith" by obtaining documentation that debts and assets were commingled, bills were in both names, joint income tax returns were filed, etc. Your client will then have this documentation available when it is time to apply for permanent residency.

3. For an abused spouse, consider the provision of the Violence Against Women Act that allows certain spouses and children of U.S. citizens and lawful permanent residents to file an I-360 "self petition" for lawful permanent residency. This remedy is available if their non-alien spouse or parent does not wish to file the normally required I-130 immigrant visa petition. The self petition can be filed *during* dissolution of a marriage but not after dissolution is final. See 8 C.F.R. §204.2(c)(1)(ii).

### DOMESTIC VIOLENCE

8 USC §1227(a)(2)(E)(i), INA §237(a)(2)(E)(i) states: "Any alien who at any time after entry is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable." This provision covers a crime of violence (as defined in section 16 of title 18, United States Code) committed by a victim's current or former spouse, an individual with whom the victim shares a child, a live-in partner, or anyone against whom the victim is protected under the domestic or family violence laws of the United States or any state, Indian tribal government, or unit of local government.

8 USC §1227(a)(2)(E)(ii), INA §237(a)(2)(E)(ii) renders deportable any alien who is enjoined under a court-issued protection order after entering the U.S. and has then threatened violence, engaged in repeated harassment, or inflicted bodily injury on anyone named in the protection order. The term "protection order" means "any injunction issued to prevent violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions), whether obtained by filing an independent action or as a pendente lite order in another proceeding."

8 USC §1227(a)(2)(E), INA §237(a)(2)(E)

applies to convictions or violations occurring after September 30, 1996.

## THE EFFECT OF MARITAL STATUS

Certain family-based immigrant visa categories are only available to those who are *unmarried* – a fact your clients must know if they are to qualify for permanent legal residency and avoid deportation. If the INS learns that it conferred a status on an alien under the mistaken belief that the alien was unmarried, the alien is subject to deportation. This can occur at any time, even after many years of residency in the United States.

Lawful permanent residents are eligible to file immigrant visa petitions for their spouses and unmarried children under INA §203(a)(2). A child can obtain lawful permanent resident status in this category and marry *the next day* without jeopardizing permanent resident status. However, the same child will be disqualified or lose such status by marrying *one day before* obtaining it.

Under 8 USC §1153(a)(1), INA §203(a)(1), a United States citizen is eligible to file an immigrant visa petition for an unmarried adult child, although currently there is a waiting period and a numerical limitation on the number of immigrant visas that can be issued each year in this category. Under INA §203(a)(3), U.S. citizens can petition for married children as well, but the waiting period is several years longer and a child who marries while on the waiting list is automatically shifted into the category with the longer wait.

In the case of step-children, it is better to marry as soon as possible. Immigration law confers certain benefits on step-parents and step-children, but to qualify, 8 USC §1101(b)(1)(B), INA §101(b)(1)(B) requires that the marriage creating the "step" relationship occur before the child's eighteenth birthday.

## ADOPTION AND IMMIGRATION RIGHTS

An adoption, however *bona fide,* does not by itself create immigration rights for the adopted child or the child's adoptive parents. 8 USC §1101(b)(1)(E), INA §101(b)(1)(E) requires that the adoption be completed prior to the child's sixteenth birthday and that the child be in the legal custody of and reside with the adoptive parents for at least two years before an immigrant visa petition (the first step towards obtaining lawful permanent residency status) based on the adoptive relationship can be filed. This statute also provides that "no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status" under the INA.

## WEDLOCK AND IMMIGRATION

Immigration law treats children born out of wedlock less favorably than children born in wedlock. The mother of a child born out of wedlock may petition for her child without difficulty. However, INA §101(b)(1), 8 USC §1101(b)(1) requires that the father of a child born out of wedlock either:

- legitimate the child "under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States ...before the child reaches the age of eighteen years and [that] the child [be] in the legal custody of the legitimating parent...at the time of such legitimation" or
- establish that a "bona fide parent-child relationship" existed between the father and the child prior to the child's twenty-first birthday.

A little knowledge can be a dangerous thing. But in the field of immigration law, absence of knowledge can be extremely dangerous.

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