



## Introduction to Family- Based Immigration

### Week Three

---

---

---

---

---

---

---

---

### Week 3 - We'll Be Talking About:

- Immigrating through Marriage
  - Definition of marriage
  - Immigrating through marriage limitations
  - Fiancé petitions
  - Conditional residency
- Immigrating as a Surviving Spouse
- Remedies for Other Surviving Relatives



---

---

---

---

---

---

---

---

### Immigrating Through Marriage

- Marriage Requirements for Immigration:
  - Legal
  - Bona fide
  - Not against public policy
- Limits on immigrating through marriage
  - Marriage during removal proceedings
  - INA § 204(c)
  - Petitions by legal residents
- Fiancé petition – USC petitioners only



---

---

---

---

---

---

---

---

## Qualifying Marriage

- Valid and recognized where it occurred
- Parties capable of marriage
- Good faith marriage
- Common law marriage
  - Alabama, Colorado, Iowa, Kansas, Montana, Oklahoma, Rhode Island, South Carolina, Texas, Utah, Washington, D.C.
- Sham marriage not recognized
- Viability not required

4



---

---

---

---

---

---

---

---

## Red Flags of Sham Marriage

- Large age disparity
- Language difficulties
- Cultural differences
- Family unaware of marriage
- Arranged by 3<sup>rd</sup> party
- No ceremony or reception
- Lack of joint documentation
  - What are other red flags?

5



---

---

---

---

---

---

---

---

## Would You Take This Case?

Clarita, a citizen of the Philippines, married Henry, a USC six months ago. Clarita is 35 years old and Henry is 78 years old. Henry's 42-year-old son attended the wedding at City Hall, but no one from Clarita's family attended. Clarita's English is fluent, but hard to understand.

6



---

---

---

---

---

---

---

---

## Bar To Any Visa Petition Approval If Sham Marriage

- INA § 204(c)
- Non-citizen who “attempted or conspired to entered into a marriage” to obtain immigration benefits is barred from ever obtaining an approved petition if there is a finding that the marriage was for the purpose of evading immigration laws

7



---

---

---

---

---

---

---

---

## Presumption of Sham

- INA § 237(a)(1)(G)
- Marriage entered into less than two years prior to admission **and** Marriage annulled or terminated within two years after any admission
- Non-citizen entitled to rebut presumption that marriage not for immigration purposes

8



---

---

---

---

---

---

---

---

## Cause for Concern?

Rene, a citizen of France, married George, a citizen of the US in 1985. She became an LPR in January 1986 and she divorced George in December 1987. She wants to immigrate her new husband. Does the marriage fraud presumption apply to her?

9



---

---

---

---

---

---

---

---

## Marriage Entered Into During Proceedings

- INA § 204(g)
- If marriage entered into during proceedings, I-130 cannot be approved until non-citizen has lived outside US for two years
  - **Exception:** Establish marriage bona fide by clear and convincing evidence

1  
0



---

---

---

---

---

---

---

---

## Limitation on Petitions by LPR

- INA § 204(a)(2)(A)
- LPR petitioner may not petition for subsequent spouse if it is within five years of obtaining residency through marriage to US citizen or LPR
  - **Exception:** Establish that prior marriage was bona fide through clear and convincing evidence or that first spouse died

1  
1



---

---

---

---

---

---

---

---

## Pop Quiz: T or F

- USC Hassan had 2 wives in Sudan and immigrated his 1<sup>st</sup> wife. Polygamy is legal in Sudan. If he submits an I-130 for his second wife it should be approved.
- Harry from England met USC Sally two months ago and they married last week. Harry is 30 years younger than Sally. If Sally files an I-130 for Harry, it will not be approved.
- LPR Jenna met Pavel when she was traveling in Poland last year. They recently decided to get married. Pavel entered the US on a visitor's visa 2 months ago. Jenna can file an I-129F petition for Pavel and he can change his status to a fiancé.

1  
2



---

---

---

---

---

---

---

---

## Petitioning for Fiancé(e) K-1s

- Hybrid visa – nonimmigrant but treated like immigrant visa for screening, waivers
- Only U.S. citizens may apply
- Must have bona fide intention to marry
- Legally able to marry in U.S. w/in 90 days
- Must have met (in person) w/in last 2 years unless show extreme hardship to petitioner or would violate strict, established customs

1  
3



---

---

---

---

---

---

---

---

## Petitioning for Fiancé(e)

- Submit petition on Form I-129F
- Submit declarations from petitioner and beneficiary, family, friends
- Submit other proof (letters, photos, bills)
- G-325A; photos; fee
- IMBRA issues:
  - Disclose convictions for “specified crimes”
  - Disclose if use international marriage broker
  - Limitation on number of K-1 petitions

1  
4



---

---

---

---

---

---

---

---

## K-1s after I-129F Approval What's next?

- Once approved → consulate notified where fiancé(e) resides
  - Consulate sends visa instructions
  - Forms: See consulate website
- Once K-1 visa issued →
  - Valid for entry purposes for four months, but can be extended by consulate
  - After entry, I-94 valid for 90 days and cannot be extended

1  
5



---

---

---

---

---

---

---

---

## K-2 Derivatives

- K-2s for kids, even if not stepchildren (e.g., may be over 18 years)
- No separate petition required from USC
- K-2 can follow-to-join within one year of K-1, even if principal has adjusted status

1  
6



---

---

---

---

---

---

---

---

## Adjustment to Permanent Residence after K-1 Entry

- Marriage within 90 days of entry
- Marriage to original petitioner – limit imposed by INA § 245(d)
- Adjusts to conditional resident
- K-2 adjusts as derivative (e.g., does not need to be stepchild)

1  
7



---

---

---

---

---

---

---

---

## Conditional Resident Status

- Marriage is less than two years old at time of admission or adjustment
- Conditional status for two years
- Conditional status also imposed on children if obtained status based on parent's marriage
- INA § 216, 8 CFR § 216

18



---

---

---

---

---

---

---

---

## Removing Conditional Status

- Joint petition (Form I-751) filed within 90 days before end of 2-year period with proof of bona fide marriage
- CIS may consider a joint petition filed after the 90-day period only if can establish **good cause** for failing to file
- Failure to file: termination of status, initiation of removal proceedings

19



---

---

---

---

---

---

---

---

## I-751 Waivers

- Joint petition requirement can be waived if:
  - Good faith marriage, but spouse deceased
  - Good faith marriage, but marriage terminated by divorce or annulment
  - Good faith marriage, but CR battered or subjected to extreme cruelty
  - Termination of status result in extreme hardship
- May be appropriate to file waiver before or after 90-day period
- If in proceedings, seek continuance pending adjudication of waiver

20



---

---

---

---

---

---

---

---

## How Would You Counsel Monica?

Monica from Brazil married USC Mark on August 10, 2013. Mark filed an I-130 and Monica filed an I-485 application in May 2014. Monica has an interview at USCIS next week. If her application is granted, what will her status be? What extra steps will she need to take in the future concerning her residence? What if Monica and Mark decided to get divorced shortly after her residence status is approved?

2  
1



---

---

---

---

---

---

---

---

## Removing Conditional Status for Children

- Children of CR who acquire CR status concurrently or within 90 days of parent can be included on parent's I-751
- If not within 90 days, file separate I-751

22



---

---

---

---

---

---

---

---

## Review Hypos

- Monica has a 14-year-old son Renaldo from a previous relationship. Mark filed an I-130 petition for Renaldo and it was approved last year. Renaldo has an immigrant visa interview in Rio de Janeiro on November 22<sup>nd</sup>
- What is the relationship between Mark and Renaldo?
- What will Renaldo's status be if he is issued the immigrant visa and enters the U.S. in August 2015 after he finishes school?
- What steps will he have to take in the future concerning his residence status?

23



---

---

---

---

---

---

---

---

## Review Hypos

- Jaime, from Argentina, and Jane, from the US, have been married for 1 year and have a child. An I-130 is approved, but they are not getting along and want to live alone for awhile. Can Jaime still immigrate?
- Greta, from Sweden, became an LPR in 2010 through marriage to a US citizen. She divorced in 2012 and remarried this year. Can Greta file an I-130 for her new husband? Do you see any barriers to approval?

2  
4



---

---

---

---

---

---

---

---



## What's Up With The Mendoza/Villegas Family?

- What documents should the couple gather?
- If Louisa files an I-130 petition for Jorge today and it is approved, do you think he will be a conditional resident? Why or why not?
- If Jorge is arrested by ICE and placed in removal proceedings before Louisa is able to file an I-130 for him, will she need to submit any additional documents or do anything differently when she files the I-130 for him? If so, what should she do?

2  
5



---

---

---

---

---

---

---

---

---

---

## Self-petitions for Widow(er)s of U.S. Citizens: Who Qualifies?

- Married to a U.S. citizen (citizen at time of death)
- Married at time of citizen's death, no legal separation
- File I-360 within two years of the death
- Not remarried

26



---

---

---

---

---

---

---

---

---

---

## Can Jose Immigrate After Elena's Death?

- Jose and Elena, a US citizen, married on July 4, 2013. Elena filed an I-130 for Jose 3 months ago, and it is still pending. Elena died last week. Jose entered the US on a tourist visa 4 years ago. Is Jose still eligible to immigrate?
- What if Jose has a 17-year-old child in Mexico?

2  
7



---

---

---

---

---

---

---

---

---

---

## Widow Filing Procedure

- Submit copy of the following:
  - Marriage certificate
  - Proof of good faith marriage
  - Proof of citizenship of deceased
  - Death certificate
  - Termination of prior marriages
  - Birth certificate of minor children
- Pending or approved I-130 converts to I-360
- No affidavit of support (Form I-864W)



---

---

---

---

---

---

---

---

## Other Surviving Relatives INA § 204(I)

- Law helps principal and derivative beneficiaries when petitioner dies
- Law helps derivative beneficiaries when principal beneficiary dies
- Law helps beneficiaries in both family and employment-based categories
- USCIS memo, December 16, 2010 implemented the law

2  
9



---

---

---

---

---

---

---

---

## Surviving Relatives Covered By 204(I)

- Widows of LPRs
- Children of LPRs
- Children of USCs
- Adult unmarried sons, daughters of USCs and derivatives
- Married children of USCs and derivatives
- Parents of USCs
- Siblings of USCs and derivatives
- Spouses and children of asylees, refugees
- Derivative of principal T and U visa holders
- Derivatives when principal beneficiary dies in family and employment-based cases
- VAWA Derivatives

3  
0



---

---

---

---

---

---

---

---

## Requirements for § 204(I)

- Beneficiary must have been residing in US on date petitioner died and continue to reside in US through approval
- Not all beneficiaries need to meet residency requirement
- Need substitute sponsor for affidavit of support

3  
1



---

---

---

---

---

---

---

---

## Benefits of 204(I)

- Beneficiaries may continue with the case as if the petitioner or principal beneficiary had not died
- Can continue with adjustment of status or consular processing
- Does not allow for adjustment if not otherwise eligible
- Must still satisfy petition requirements



---

---

---

---

---

---

---

---

## 204(I) in Action

Natasha, an LPR, filed an I-130 for her husband, Ivan, on November 1, 2014. She died a month later, while the petition was still pending. Ivan has been in the US since he entered on a tourist visa in March of 2009. Can section 204(I) help Ivan?

3  
3



---

---

---

---

---

---

---

---

## Who Else Qualifies for § 204(l)

Joe, a US citizen, filed a petition for his sister Barbara in 2001. It was approved one year later. The priority date became current last month and Barbara and her family immediately filed for adjustment. Joe died yesterday. Barbara and her family were all residing in the US when Joe died and will continue to reside here. Do they qualify for 204(l)?

3  
4



---

---

---

---

---

---

---

---

## Effective Date

- Law applies to petitioner/applications pending on or filed on or after October 28, 2009
- Petitioner could have died before that date
- If petition/application formally revoked prior to October 28, 2009 and beneficiary satisfies requirements, can file motion to reopen

3  
5



---

---

---

---

---

---

---

---

## Humanitarian Reinstatement

- Remedy to pursue where 204(l) doesn't apply **AND** petition already approved
- Under 8 CFR § 205.1(a)(3)(i)(C) need to show humanitarian basis for reinstatement
- Written request, supporting documentation including substitute I-864
- Not available where principal beneficiary died

3  
6



---

---

---

---

---

---

---

---

## Is a Remedy Available?

LPR Jose filed an I-130 on behalf of his wife Raquel, who resides in Peru. A year later, after the I-130, Jose died. Is there a remedy available that will allow Raquel to still immigrate as Jose's wife? What if Jose died before the petition was approved?

3  
7



---

---

---

---

---

---

---

---

## Week Three Exercise

Carlos and Mariel marry and Mariel adjusts to conditional resident. Two years later the couple has separated due to Carlos's alcohol-related problem. What are Mariel's options in removing the conditional status?

3  
8



---

---

---

---

---

---

---

---

## Next Steps for You: Week 4

- **Reading:**
- **Activities:**
  - \*\* Quiz
  - \*\* Exercise on affidavit of support
- **Question Board:**
  - \*\*Post questions

3  
9



---

---

---

---

---

---

---

---

## E-Learning: Week 4

HAVE FUN!  
SEE YOU NEXT WEEK!



4  
0



---

---

---

---

---

---

---

---

## Questions?



CATHOLIC LEGAL  
IMMIGRATION  
NETWORK, INC.  
[www.cliniclegal.org](http://www.cliniclegal.org)

8757 Georgia Avenue, Suite 850  
Silver Spring, MD20910  
301-565-4832  
[national@cliniclegal.org](mailto:national@cliniclegal.org)

Follow us:  
[twitter.com/cliniclegal](https://twitter.com/cliniclegal)



Become a fan:  
[facebook.com/cliniclegal](https://facebook.com/cliniclegal)



---

---

---

---

---

---

---

---