



MARRIAGE FRAUD: DEFINITION, CONSEQUENCES & SOLUTIONS
(Published in *Mshale*, April 2011)

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Marriage transcends religion, language, culture and, in some cases, even gender. Although marital rights are recognized almost everywhere in the world, each country defines them differently. The reasons to marry include legal, social, emotional, economical, spiritual and religious factors, and vary across individuals as well as cultures. Some marriages are arranged while others are chosen by the parties themselves. Marriages are entered into for family obligations, the legal establishment of a nuclear family unit, the legal protection of children, and the declaration of the parties' commitment to each other.

Regardless of the various reasons for marriage, all foreign nationals seeking to immigrate to the United States based on marriage to a U.S. citizen or lawful permanent resident (LPR) must prove one thing: they share a bonafide marriage that is based on mutual love and affection and was entered into with the intent of establishing a life together. If U.S. Citizenship & Immigration Services (USCIS) concludes that the parties married solely or primarily to obtain U.S. immigration benefits, it will issue a marriage fraud finding and deny the I-130 spousal petition. A sham marriage determination may also result in the refusal of issuance of an immigrant visa, denial of adjustment to lawful permanent resident status, the loss of resident status previously granted, and removal from the United States. A marriage fraud finding that is not overcome could forever bar the foreign national from gaining permanent resident status in the U.S.

Sham Marriage Determination

To reach an initial marriage fraud finding, USCIS must have sufficient evidence to reasonably infer that the marriage is a sham, which the parties may overcome with rebuttal evidence. To deny a second or subsequent petition based on a prior marriage fraud finding, USCIS must have "substantial and probative evidence" of a sham marriage. The key question is whether the husband and wife intended to establish a life together at the inception of their marriage. The parties' conduct after they marry is one important factor for USCIS to consider.

Immigration Laws Aim to Curb Marriage Fraud

In 1986, Congress passed the Marriage Fraud Amendments to the Immigration & Nationality Act (INA) to address the growing concern about foreign nationals seeking permanent residence based on marriage to citizens or LPRs when the marriage was entered into for the sole purpose of obtaining permanent residence. The law includes a conditional residence requirement for foreign nationals who obtain permanent residence based on marriages that are less than 24 months old. In such cases, the LPR status is conditional and limited to two years. No earlier than 90 days before the two-year residence expires, the foreign national must then file a Form I-751 petition with USCIS to remove the conditions and keep the permanent residence status. A joint filing by both parties is preferred, but the foreign national may file alone when the parties are divorced and certain other conditions are met. USCIS normally reinvestigates the bona fide nature of the marriage, so that the approval of the initial I-130 petition does not automatically lead to an approval of the I-751 petition. If USCIS finds that the marriage was fraudulent after all, it will deny the I-751 petition but the foreign national may request review in removal proceedings before the Immigration Court.

Section 237 of the INA also allows for foreign nationals to be removed from the U.S. if they are found to have committed marriage fraud. Section 204(c) of the INA further bars the approval of a petition if the foreign national previously received or sought to receive immigration benefits based on a marriage that was found to be a sham. This means that USCIS may not only investigate the current marriage, but also inquire into past marriages. Even when there is overwhelming evidence to show that the current marriage is bona fide or that an employer has filed a meritorious employment-based petition, USCIS will not approve the petition if a prior marriage fraud finding exists. If the first petition was denied due to suspected sham marriage, the subsequent petition must include new evidence or compelling arguments to challenge the marriage fraud finding. USCIS, the Board of Immigration Appeals, and most (if not all) federal courts have authority to review I-130 petitions. Immigration Courts do not.

USCIS is generally more suspicious of marriages that occurred after the foreign national was placed in removal proceedings. Foreign nationals are barred from adjusting their status or seeking immigrant visas on the basis of a marriage entered into while they are in removal proceedings, unless they can show by “clear and convincing evidence” that the marriage was entered into in good faith.

In the age of terrorism, USCIS and Immigration & Customs Enforcement (ICE) view marriage fraud as a threat to national security. While such cases are not always prosecuted, they carry penalties up to five years' imprisonment and a \$250,000 fine for any person who knowingly enters into a sham marriage for immigration purposes.

Proving the Marriage is Bona Fide

A marriage certificate and proof of termination of all prior marriages are required to support a spousal petition. Documents to help show that a marriage is bona fide include proof of joint ownership of property; evidence of joint tenancy of a common residence; joint bank accounts and other proof of commingling of assets; shared debts and expenses; birth certificate(s) of

child(ren) born to the parties; and affidavits by third parties having personal knowledge of the marriage.

Additionally, during the marriage interview before USCIS, the parties must be able to provide detailed and consistent answers about their relationship. The officer may choose to interview each party separately to draw out inconsistencies, which USCIS may use to support a marriage fraud finding. It is very helpful to have counsel present during the interview, especially when the parties are questioned separately.

Because the parties are sworn under oath, they are required to tell the truth. If the parties separated or keep separate residences due to marital problems or financial reasons, they must be upfront with USCIS and not lie about their situation. Wilful misrepresentation of a material fact to USCIS is one basis to deny the petition and bar the foreign national from obtaining permanent residence. Unannounced site visits to the couple's claimed, shared residence are also common when USCIS suspects marriage fraud.

Greater scrutiny results when there is a lack of bona fide marriage documents, especially when the marriage is new. Other factors that may be causes for concern are vast age differences, language barriers, and cultural differences between the parties. Separations, separate residences, adultery, and other signs of a troubled marriage are also red flags, even though they do not necessarily mean the marriage is a sham. The husband and wife must be able to answer questions about each other's personal history, families, employment, and other issues related to their marriage. Longer marriages in which the parties have children together usually make the strongest cases.

Because a marriage fraud finding leads to brutal immigration consequences, it is highly recommended that persons seeking to obtain permanent residence through marriage to a U.S. citizen or LPR consult with an experienced immigration attorney before filing the petition. Consulting with an experienced attorney is also critical if USCIS issues a notice of intent to deny the petition or denies the petition based on marriage fraud. Legal representation is especially needed when the couple is facing marital problems. With experienced counsel, the parties will be better able to prevent, address, and rebut marriage fraud allegations so that the foreign national may obtain or maintain permanent residence.