

Good News for Fiance(e) Visa Holders

A recent case by the Board of Immigration Appeals (BIA) states that applicants that entered the U.S. with a Fiance(e) visa, also known as K-1 or K1 visa, can now still get their green card even if they are divorced before the green card application is processed by USCIS. The applicant, however, must have married the U.S. spouse for bona fide reasons within the 90 day period of entering the U.S. In this new precedent case, the green card was not yet completed by USCIS two years after the couple's marriage took place. The couple became divorced after two years of marriage and before the alien wife had received her conditional residence. The BIA held that she can still receive her green card, even though two years later she got divorced.

For example, if you enter the U.S. on a fiancé(e) visa and marry your U.S. spouse within 90 days, you will still receive your green card even if you get divorced before USCIS completes processing your green card application in two years. A divorce before the applicant receives the green card does not make the fiancé(e) visa null and void nor does it terminate the approved I-129F that the applicant used to enter the U.S.

This case law is good news for fiancé(e) visa holders, as all other applicants married to U.S. citizens must generally still be married in good faith to their spouses at the time of their green card application interview and thereafter. There are some exceptions to this rule and an experienced immigration attorney can assist with these cases.

So if you entered the U.S. on a fiancé(e) visa, married the U.S. citizen sponsor and are now separated or divorced from your husband, you may still be eligible for the green card based, depending on timing issues of course! This is good news for many people that entered on a K-1 visa, got married and then realized that they can no longer remain married to their U.S. Citizen spouse. In fact, when filing for the green card, fiancé(e) visa holders may not even need the Form I-130 to be filed on their behalf. The Form I-130 is the petition that the U.S. citizen must sign. These lenient rules are being implemented because fiancé visa holders must undergo a strict interviewing process at the U.S. Embassy.

However, a major restriction on fiancé(e) visas is that applicants that enter the U.S. with a fiancé(e) visa can only get a green card through the same U.S. citizen that petitioned for them. A new bona fide marriage to another U.S. citizen will not help the fiancé(e) visa holder to get a green card, even if they have 10 kids together. A fiancé(e) visa holder also cannot adjust through other family members petitioning for them and cannot adjust through an employment based petition. If the applicant fears returning to their country because of political, religious, nationality, or gender or social group based reasons, then that applicant can file an application for asylum here in the U.S.

The fiancé(e) visa holder must still submit proof of the bona fides of their marriage, even if now divorced, in their adjustment package to prove that their marriage was real and valid at the time of inception. While the divorce should not cause the green card application to be denied, the Officer can still look at the events that occurred after the couple married to determine the intent of the couple at the time they married.

If the couple did not live together and became separated shortly after the marriage, the Officer may determine in his discretion that the marriage was never bona fide. If the U.S. citizen was abusive and this is the reason that the couple separated shortly after their marriage, then the K-1 visa holder should provide proof of the abuse and provide an explanation to the Officer so that the green card application does not get denied.

The case to reference is Matter of SESAY, 25 I&N Dec. 431 (BIA 2011). Please do not assume that the contents of this article can be applied to your case as details in each person's case highly affect the immigration outcome. Please go to www.needimmigrationhelp.com for more information.