

Filing the I-751 Waiver Application

What to do about getting 2 years conditional permanent resident status when there is divorce or divorce case is still pending?

You can file Form I-751 at "any time" if you have a final order of divorce or annulment. That's true even if your conditional green card is not close to its expiration date. But what happens if you haven't yet filed for divorce or your divorce is not yet final?

If you have separated from your U.S. citizen spouse or he or she refuses to file Form I-751 with you then you will need to make some strategic decisions to what to do next.

1. In such a case, you have a few options:

- Remain married and file Form I-751 with a waiver based on "extreme hardship" or "battery or extreme cruelty" if either applies to you.
- File for divorce and mail the Form I-751 with evidence that you have initiated divorce proceedings (though this is problematic in that USCIS really prefers to see a final divorce order before issuing an approval), or
- Wait until your conditional residence expires and you are placed into removal proceedings to file for a waiver.

2. Weighing Your Options If Your Divorce Isn't Final.

You can bypass the divorce waiver if you or your conditional resident child was battered or subject to extreme cruelty by your U.S. spouse or if your removal from the U.S. would subject you to "extreme hardship." For more on what is necessary for hardship or abuse waivers, see below. Note that you can apply for one or both of these waivers if they apply to you.

Because USCIS wants to see a final order of divorce or annulment with your I-751 divorce waiver request, some conditional residents get "stuck" in processing.

Divorce proceedings can take several months or longer if contested. However, some conditional residents have successfully dealt with this by filing a copy of their divorce petition and proof of their scheduled mediation sessions or court dates along with their Form I-751.

In most cases, USCIS will then issue a receipt notice (on Form I-797) that extends the applicant's green card for a designated time (usually a year).

Later, USCIS will issue a "Request for Evidence," asking for the final divorce decree when available.

If your divorce is not finalized and you remain in the U.S. after the expiration date of your

conditional residence without first filing a Form I-751, you may be placed into removal proceedings.

Because you were unable to timely file Form I-751, you may be able to request a continuance of these proceedings (and a temporary green card) while you wait for the final divorce or annulment decree so you can file Form I-751.

3. Filing a I-751 with a Divorce Waiver.

(a) In order to file a Form I-751 with a waiver based upon a divorce, you need to submit a completed and signed petition along with the following:

- Filing fee
- A copy of your permanent resident card (front and back)
- A copy of the divorce decree or annulment document that ended your marriage (if available; if not, evidence that the divorce proceedings are underway)
- Evidence that the marriage was genuine. For a list of documents that conditional residents have used to prove that their marriage was entered into in good faith, see the bona fides list provided to you when we met in the NY Office
- Evidence regarding the circumstances surrounding the end of your marriage (if you were not at fault).

4. When to Submit Evidence About Why You Divorced.

You also might want to submit a personal statement or other evidence regarding the circumstances of your divorce in order to prove that it was not your fault that the marriage ended. For example, you can provide evidence of:

- (a) No-fault divorce: If the divorce petition was initiated due to irreconcilable differences or a mutual understanding, you should state that the divorce was a no-fault action and the differences that led to the end of your marriage (disagreements about whether to have children, where to live, or anything else that is relevant).
- (b) The divorce having been your ex-spouse's fault: If you alleged grounds for divorce or annulment such as adultery, abandonment, impotency, or imprisonment, you should submit a copy of the divorce or annulment petition that alleged those fault grounds or documents that tend to prove those grounds. You can also provide affidavits from people who know you and your ex-spouse attesting to the fact that the divorce was the fault of your former spouse.
- (c) Having attempted marriage counseling: If you or your ex-spouse initiated marriage counseling sessions prior to your divorce (and you mentioned to us that this is the case), you can provide invoices for those sessions or evidence that you tried to convince your former spouse to go to a marriage counselor. This could include e-mails to your ex-spouse or evidence that you contacted a counselor during your marriage (e-mails to a counselor or a letter from a counselor stating that you requested information from his or her office). As mentioned to you, this also helps prove that the marriage was bona fide.

5. What Happens After You File.

After you file your petition, USCIS will issue a receipt notice on Form I-797 that will serve as your green card after your conditional card expires and will allow you to continue to live and work in the United States and travel abroad.

Make sure to respond to all requests for evidence and appointment notices from USCIS. Most petitions to lift conditions that are filed with a waiver of the joint filing requirement will be referred to a local office for an interview. When you attend your interview, bring copies of all evidence that you submitted along with your Form I-797 and be prepared to answer questions about your marriage and divorce.

If you should have any questions or need more information about the ways in which the U.S. Immigration and Nationality Laws may impact you, your family, your friends or your colleagues, please contact the U.S. Immigration and Nationality Lawyers at the NPZ Law Group – VISASERVE – U.S. Immigration and Nationality Lawyers by e-mailing us at info@visaserve.com or by calling us at 201-670-0006 (x107). You can also visit our Law Firm's website at www.visaserve.com