

SAME SEX MARRIAGE – IMMIGRATION BENEFITS 2013

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The Supreme Court struck down a key part of the Federal Defense of Marriage Act (DOMA) last Wednesday and declared that same-sex couples, who are legally married deserve equal rights to the benefits under federal law that go to all other married couples.

The decision is a landmark win for the gay rights movement. It voids a section of the law known as DOMA, which was adopted with bipartisan support in Congress in 1996 to deny all benefits and recognition to same-sex couples.

The following is Statement from Secretary of Homeland Security, Janet Napolitano:

"After last week's decision by the Supreme Court holding that Section 3 of the Defense of Marriage Act (DOMA) is unconstitutional, President Obama directed federal departments to ensure the decision and its implication for federal benefits for same-sex legally married couples are implemented swiftly and smoothly. To that end, effective immediately, I have directed U.S. Citizenship and Immigration Services (USCIS) to review immigration visa petitions filed on behalf of a same-sex spouse in the same manner as those filed on behalf of an opposite-sex spouse."

Thousands of persons who were living together in same sex relationship for a long long time, were unable to get any benefits from the Federal Government, could not apply for Immigration benefits due to Defense of Marriage Act (DOMA), which prohibited any benefits for same sex couples and USCIS denied applications filed by US Citizens or Green Card holders, for the same sex spouse.

Supreme Court has now rendered decision to strike down the core provisions of DOMA and opened the door of the spouses of the same sex US Citizens or permanent resident to seek Immigration benefits, provided the marriage is valid in the place where marriage was performed.

Following are some of the frequently asked questions and answers which explain how same sex applicants can get Immigration benefits.

Frequently Asked Questions

Q1: I am a U.S. citizen or lawful permanent resident in a same-sex marriage to a foreign national. Can I now sponsor my spouse for a family-based immigrant visa?

A1: Yes, you can file the petition. You may file a Form I-130 (and any applicable accompanying application). Your eligibility to petition for your spouse, and your spouse's admissibility as an immigrant at the immigration visa application or adjustment of status stage, will be determined according to applicable immigration law and will not be automatically denied as a result of the same-sex nature of your marriage.

Q2: My spouse and I were married in a U.S. state that recognizes same-sex marriage, but we live in a state that does not. Can I file an immigrant visa petition for my spouse?

A2: Yes, you can file the petition. In evaluating the petition, as a general matter, USCIS looks to the law of the place where the marriage took place when determining whether it is valid for immigration law purposes. That general rule is subject to some limited exceptions under which federal immigration agencies historically have considered the law of the state of residence in addition to the law of the state of celebration of the marriage. Whether those exceptions apply

may depend on individual, fact-specific circumstances. If necessary, we may provide further guidance on this question going forward.

Secretary of the State John Kerry made the statement status *“To fully implement the requirements and implications of the Court’s decision, we will work with the Department of Justice and other agencies to review all relevant federal statutes as well as the benefits administered by this agency.”* Now that the Supreme Court has found key aspects of the Defense of Marriage Act (DOMA) unconstitutional, the President has directed the Attorney General to work with other members of his Cabinet to review all relevant federal statutes to ensure this decision, including its implications for Federal benefits and obligations, is implemented swiftly and smoothly. The Department of State is working with the Department of Justice to review all relevant federal statutes and regulations that affect visa processing and immigration benefits. We recognize the significance of this decision for affected families, and we are working to interpret the decision and implement policy and procedural changes as soon as possible.

Department of State has advised all the American Consular posts with regard to the decision of the Supreme Court and to implement the regulations relating to the visa processing, if individuals or otherwise eligible for Immigration benefits.

For more information, please feel free to contact the Immigration and Nationality Lawyers at the NPZ Law Group at 201-670-0006 or by e-mailing us at info@visaserve.com.