

GAY MARRIAGES GET RECOGNITION: CIS OFFICES ACCEPT SAME
SEX MARRIAGE GREEN
CARD PETITIONS.

There is a great deal of hype on the web that seems to have its genesis in a report by Newsweek. The issue of "gay rights" continues to percolate on Capitol Hill and beyond. The good news is that there may be some ripple effect from the Obama Administration's decision not to defend the Defense of Marriage Act (Pub.L. 104-199, 110 Stat. 2419, enacted September 21, 1996, 1 U.S.C. § 7 and 28 U.S.C. § 1738C) ("DOMA"). It appears to be the case that we are going to see DOMA being struck down.

In the interim, two CIS offices (Washington, DC and the Baltimore, Maryland, District Offices), have announced that they will not deny I-485, Adjustment of Status Applications. Rather, they have decided to put them on "hold" pending the decision by the Courts. They appear to be destined for the U.S. Supreme Court.

It appears to be the case that legally married same sex couples - either married in the U.S. (in States that permit same sex marriages) or in a foreign country that recognizes same sex marriages, will be able to file an I-485 Adjustment of Status Application with a simultaneously filed I-130 Petition for a Foreign National Spouse.

As part of the simultaneous filing of the I-130 and I-485, the foreign national beneficiary should be able to obtain a travel document (Advance Parole Travel Document) and Employment Authorization Document ("EAD") pending the outcome of the case with the CIS. In addition to the foregoing, the move by these two District Offices makes it more difficult for the U.S. Department of Homeland Security to take steps to deport a same sex spouse.

In light of the recent determination, there will now be a strong argument for Legal Counsel to get an Immigration Judge to place such a case on "hold". This is something most judges would ordinarily do pending the outcome of the Court's Determination with regard to a marriage-based petition that ends-up being heard by a Judge.

CIS spokesman Christopher Bentley told Newsweek: "We have not implemented any change in policy and intend to follow the President's directive to continue enforcing the law." For many years our office has been quite pessimistic about the favorable consideration of same sex marriages for "immigration" law purposes. It is great to see some common sense injected into our arcane system of immigration laws.

For more information about the foregoing, please feel free to e-mail us at info@visaserve.com