

In October 2012, DHS clarified that the positive factor of “family relationships” that warrants the exercise of discretion includes long-term same-sex relationships in which the individuals are each other’s sole domestic partner and intend to remain so indefinitely; are not in a marital or domestic relationship with anyone else; and typically maintain a common residence and share financial obligations and assets.

Under these guidelines on the exercise of prosecutorial discretion, your marriage to your same-sex partner may help to demonstrate your ties to the United States and strengthen your case.

What if my non-citizen partner has children who are under the age of eighteen?

Immigration law provides a U.S. citizen step-parent with the right to file visa petitions and other applicable applications on behalf of their step-children just as if they were the biological parent, as long as the step-parent marries the biological parent before any step-child turns eighteen. Thus, even though DOMA has not yet been repealed or struck down by the Supreme Court, if your partner has non-citizen children who will be turning eighteen soon, you may want to consider getting married before the children turn eighteen in order to preserve your right to file petitions or applications on their behalf.

I am undocumented and I am a victim of domestic violence or a violent crime.

The Violence Against Women Act allows spouses of U.S. citizens or legal permanent residents to file a self-petition based on being physically or emotionally abused by their U.S. citizen or lawful permanent resident spouse. Unfortunately, until DOMA is repealed or struck down by the Supreme Court, this right to file a self-petition will not be available.

However, if you are a victim of domestic violence within the United States, and you call the police or assist with the investigation or prosecution of the crime, you may be eligible for a “U visa.” This visa does not require you to be married, only that you show you were the victim of domestic violence or other qualifying criminal conduct (generally the victim of a violent crime). Thus, if you suf-

fered domestic violence, you should consult with an immigration attorney to determine whether you are eligible for either of these visas.

I am in the United States on a non-immigrant visa (e.g., student, visitor, temporary employment) and my partner is a foreign national. Can I marry my partner who is not a U.S. citizen or legal permanent resident?

Immigration law has no impact on your ability to get married in Washington. Moreover, immigration law often allows a foreign national in the United States on a non-immigrant visa such as a student or temporary employment visa, to include their spouse as a derivative to accompany them on the same type of visa. Unfortunately, until DOMA is repealed or struck down, such an application will not be approved.

This document was created in collaboration between the ACLU of Washington and the Northwest Immigrant Rights Project.



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This document is intended to provide information about marriage for same-sex couples who are considering getting married in Washington. It is not intended to be legal advice. For legal advice concerning your particular situation, please consult an attorney.

ON NOVEMBER 6, 2012, Washington voters approved Referendum 74, which enables same-sex couples to be married under Washington state law. This document addresses issues relevant to same-sex couples where one or both partners are not U.S. citizens, as their marriage may have an impact on their immigration status. However, much of the impact is still unclear because the Defense of Marriage Act (DOMA) precludes the federal government from recognizing marriages of same-sex couples. The Obama administration has stated that it does not think that DOMA is constitutional, and the U.S. Department of Justice is no longer defending it in court. Nonetheless, the Obama administration has also announced that it will enforce DOMA until it is repealed or found unconstitutional by the U.S. Supreme Court. Two federal appeals courts have already ruled that DOMA is unconstitutional, and it is likely that the Supreme Court will resolve the issue by the spring of 2013.

Enclosed is how Washington’s marriage law impacts people in various situations.

I am a U.S. citizen but my partner is not.

Immigration law does not preclude any person from getting married in Washington State, regardless of their citizenship or immigration status. However, there may be special considerations depending on your partner's immigration status. The marriage certificate requires spouses to list their social security numbers. Individuals who do not have a valid social security number should sign the declaration affirming that they do not have a social security number.

My partner is a legal permanent resident.

A legal permanent resident must wait five years before applying for citizenship. However, the wait time is reduced to three years if the legal permanent resident has been married to a U.S. citizen during that time period. Unfortunately, this benefit, like others many others addressed below, will not apply to same-sex couples until DOMA is repealed or ruled unconstitutional.

My partner is in the United States on a non-immigrant visa (e.g., student, visitor, temporary employment).

A U.S. citizen spouse can file a visa petition for a permanent, family-based immigrant visa on behalf of a foreign national spouse. Unfortunately, because of DOMA, U.S. Citizenship and Immigration Services (USCIS) does not currently approve petitions filed by a spouse on behalf of a same-sex spouse. Any visa petition that is filed on behalf of a same-sex spouse will likely be denied until the Supreme Court rules DOMA is unconstitutional. Until then, the foreign national spouse cannot lawfully remain in the United States beyond the length of the non-immigrant visa.

My partner is undocumented or overstayed a visa.

As discussed above, a U.S. citizen spouse can petition for a permanent, family-based immigrant visa on behalf of a foreign national spouse. Unfortunately, until DOMA is struck down, any visa petition that is filed on behalf of a same-sex spouse will likely be denied.

My partner and I are both legal permanent residents.

Immigration law has no impact on your ability to get married in Washington.

My partner and I are both undocumented.

Immigration law has no impact on your ability to get married in Washington. You should be aware that the Washington marriage certificate requires individuals to list their social security numbers. If you do not have a valid social security number, you should sign the declaration affirming that you do not have a social security number.

My partner already has an immigration petition or application pending.

There are many types of immigrant visas that allow family members to gain legal status. In addition to family visa applications, there are also permanent visa applications based on employment, which may include derivative family members like a spouse and unmarried children. Similarly, family members of other foreign nationals who have temporary visas can sometimes receive derivative status through their spouse or parent. For example, a spouse or child may receive a temporary visa based on the student visa their parent or spouse has.

Where a non-citizen already has an immigration application pending, or is the beneficiary of a visa petition, or is the derivative of an immigration application, we recommend that you speak to an immigration attorney about your specific situation before getting married, as your marriage may jeopardize any pending immigration petition or application. This is because some types of petitions and other immigration applications are available only for unmarried children.

My partner is applying for asylum or refugee status.

Generally, an individual who is granted asylum (from within the United States) or refugee status (from abroad) can petition for derivative legal status for his or her spouse and unmarried children. This benefit is only

available if you are married prior to being granted such status. Thus, if you have an asylum application pending, you should consider whether you want to get married before the application is adjudicated, in order to preserve your right to file an application for your partner, or your partner's children, if your application is approved. Until DOMA is repealed or struck down, such a petition will not be approved. Nonetheless, you should consider getting married before your asylum application is approved in order to preserve your right to make this claim.

My partner is in immigration removal proceedings.

If your non-citizen partner is now in removal proceedings, you may want to consider getting married immediately. There are many immigration benefits that are available only to someone with a qualifying relationship to a U.S. citizen or lawful permanent resident, including family visa applications and other types of waivers. Even though DOMA may currently preclude an immigration judge from recognizing your marriage, it is important to advise the court of your marriage in order to preserve your claims pending a final court ruling on DOMA. In April of 2011, the Attorney General overturned a case where a non-citizen had been ordered removed and ordered the agency to review whether the non-citizen's same-sex partner should constitute a qualifying relative, notwithstanding DOMA. Since that time, most cases involving claims based on marriage of a same-sex couple have been placed on hold.

In addition, in June of 2011, the U.S. Department of Homeland Security issued guidance to immigration officials on the exercise of prosecutorial discretion to focus resources on enforcement priorities including individuals who pose a threat to public safety, are recent border crossers, or repeat violators of immigration laws. That guidance directed immigration officials to consider the totality of the circumstances in deciding whether or not to pursue or continue removal proceedings, including whether an individual has close family ties to the United States. By exercising prosecutorial discretion, the federal government decides not to bring removal proceedings against a non-citizen, or to close removal proceedings against a non-citizen, allowing the non-citizen to remain in the United States.