DIVORCE AND IMMIGRATION STATUS BENCH CARD[1]

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1. OVERVIEW

This bench card provides information for state court judges on whether and how divorce may alter the ability of immigrant spouses, children and stepchildren to gain or maintain a legal immigration status in the United States, including an immigration visa, lawful permanent residency or naturalization. An immigration visa[2] is specifically one that allows the immigrant to live and work in the United States. Family based immigration accounts for a significant proportion (65%) of all immigration to the United States.[3] Marriage to an individual who is a U.S. citizen or lawful permanent resident provides an important path to legal immigration status and ultimately U.S. citizenship for many immigrants.[4] In addition, nearly all immigration visas granted by the federal government allow the immigrant receiving the visa to obtain visas for the immigrant visa recipient's spouse and children.[5] This process is called "sponsorship." The citizen, lawful permanent resident or visa holder who is the spouse, or parent "sponsors" their immigrant spouse and/or immigrant child by filing an application asking the Department of Homeland Security's (DHS) Office of Citizenship and Immigration Services (USCIS) to grant an immigrant visa or lawful permanent residency to their spouse or child.

As of 2017, just over a quarter (25.8%) of all children under the age of 18 in the United States have at least one foreign-born parent. More than 90% of this population of children are citizens born in the United States.[6] Nearly 60% of the children have at least one US-citizen parent, among these, 6.4

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[1] We wish to give special acknowledgment to Edna Young, Executive Director of American Gateways and Kathleen Gasparian, Immigration Lawyer for your collaboration to this bench card, your valuable insights and answers to all of our questions.

[2] Federal statutes divide immigration visas into two categories – immigrant visas (Immigration and Nationality Act § 211, 8 U.S.C. § 1181 (1990)) and non-immigrant visas (Immigration and Nationality Act § 214, 8 U.S.C. § 1184 (2015)). Over the past several decades amendments to immigration laws and creation of new visas, has blurred the lines between immigrant and non-immigrant visas such that in several instances visas that lead to lawful permanent residency by design (e.g. U and T visas for crime victims) have been included on the list of non-immigrant as opposed to immigrant visas. For this reason, this article refers to both categories as visas, which is clearer and eliminates confusion created by distinctions that are not meaningful for the purposes of this bench card.

[3] Zuzana Cepla, FACT SHEET: FAMILY-BASED IMMIGRATION, NATIONAL IMMIGRATION FORUM (2018), https://immigrationforum.org/article/fact-sheet-family-based-immigration/ (last visited Apr 2, 2019).

[4] Migration Policy Institute, STATE DEMOGRAPHICS DATA - US MIGRATIONPOLICY.ORG, https://www.migrationpolicy.org/data/state-profiles/state/demographics/US (last visited Apr 2, 2019).

[5] For a complete list of forms of immigration relief and visas including information on work authorization, whether the visa requires a sponsor and whether an immigrant can obtain visas for their spouse and children, *see* Immigration Status: *Work Authorization, Public Benefits, and Ability to Sponsor Children* https://niwaplibrary.wcl.american.edu/pubs/fam-chart-immstatus.

[6] Urban Institute, PART OF US: A DATA-DRIVEN LOOK AT CHILDREN OF IMMIGRANTS URBAN INSTITUTE (2019), https://www.urban.org/features/part-us-data-driven-look-children-immigrants (last visited Apr 1, 2019).

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million had only foreign-born parents, at least one of whom became a US citizen through naturalization; 5 million had both a foreign-born parent and a parent who was born a US citizen.[7]

Divorce has important effects on the family-based immigration process. When state family courts grant divorces and annulments that legally terminate marriages, these state court orders can have immigration consequences for non-citizen spouses, children and stepchildren. What impact a divorce or annulment may have will depend on:

- The sponsoring spouse or stepparent's immigration or citizenship status;
- The type of legal immigration status that the immigrant spouse, child, or stepchild has been granted (e.g., visa, conditional residency, lawful permanent residency);
- For immigrant spouses, children, or stepchildren with pending applications for immigration relief, the type of immigration case that is pending (e.g., lawful permanent residency, work or student visa, special immigrant juvenile status, VAWA self-petition);
- Whether the form of immigration relief the immigrant spouse, child, or stepchild has or is pursuing requires "sponsorship" or if the immigrant applicant can self-petition;
- Whether the marriage was terminated by divorce or annulment; and
- Whether the immigrant spouse, child or stepchild has suffered domestic violence, child abuse, child abandonment or child neglect perpetrated by the citizen, lawful permanent resident or visa holder spouse, parent or stepparent. The term domestic violence under U.S. immigration laws is defined as battering or extreme cruelty. [8]

This bench card will explain when, whether, and how termination of a marriage will affect the immigration status of family members before the court, discussing each form of immigration status separately for ease of reference. Depending on the type of case, divorce:

- Will result in denial of the immigrant spouse or stepchild's pending immigration application;
- Will cut off the immigrant's ability to apply for lawful permanent residency or another immigration benefit; or
- May start a time clock giving the immigrant spouse a specific timeframe within which the immigrant spouse must file an immigration case to be able to continue to maintain a form of legal immigration status
- Could delay how long a lawful permanent resident spouse needs to wait to apply for citizenship. (3 years for spouses of U.S. citizens vs. 5 years for most other immigrants).

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[7] *Id.*

[8] The immigration law definition of battering or extreme cruelty includes all forms of domestic violence covered by state protection order, child abuse, and criminal laws. Leslye E. Orloff, Brittany Roberts & Stefanie Gitler, *"Battering or Extreme Cruelty," Drawing Examples from Civil Protection Order and Family Law Cases, in Nat'l Immigrant Women's Advocacy Project* (Sept. 12, 2015), http://library.niwap.org/wp-content/uploads/2015/IMM-Qref-ExtremeCrueltyinCPOFamLawCases-10.13.13.pdf. [It also covers forms and patterns of emotional abuse that may not qualify as domestic violence under state law many of which state courts consider as part of fault determinations in reported decisions in for-cause divorce cases.]

2. FAMILY-SPONSORED IMMIGRATION

Family-sponsorship accounts for nearly half of all new permanent immigrants each year[9], and for the last decade nearly 70% of total lawful permanent immigration.[10] For the fiscal year 2020, 49% of new lawful permanent residents were immediate relatives of U.S. citizens.[11] Women constitute a significant majority of family-sponsored immigration relief applicants. As of 2009, women constituted 60.1% of immigrants entering as family members of U.S. citizens. In 2019, the U.S. granted legal permanent residence (also known as Green Card) to over 1.03 million immigrants. Green-card holders are permitted to live and work in the country indefinitely, to join the armed forces, and to apply for U.S. citizenship after five years (three if married to a U.S. citizen). Men are more likely than women to be the principal work or student visa holder who is authorized to sponsor their spouse and/or children for a visa.[12] As a result, among those listed as dependents of the principal visa holder, women account for 66.3% of authorized Visas.[13] Women are also 38% more likely to attain legal permanent resident status from a family-sponsored visa than men are.[14]

The application process:

- A citizen can petition for their spouses, children, stepchildren (unmarried and under 21) and parents (The petitioning citizen must be 21 or older.). The processing times depends on the district office where the petition was filed.
- When citizens file applications for their family members, the I-130 family-based petition can be filed together with the I-485 application for lawful permanent residence and the application for a work permit if the beneficiary is an immediate relative. When an I-130 and I-485 are filed separately, but could have been filed concurrently, USCIS is going to look for some kind of fraud or abuse.
- Lawful permanent residents can file a family based visa petition I-130 requesting that their spouses, children and stepchildren be granted lawful permanent residency. Once their application is approved, these family members of lawful permanent residents must wait in line for a visa to become available before they can file their I-485 application for lawful permanent residency. The Department of State issues a visa bulletin that provides up-to-date reports on how long spouses, children and stepchildren of lawful permanent residents will need to wait before they can file their lawful permanent residency applications.
- People who apply for permanent residency based on a marriage to a U.S. citizen or permanent resident spouse that is less than two years old, at the time their residence is granted, receive the

[9] Dep't of Homeland Security, Annual Flow Report, U.S. Lawful Permanent Residents: 2019 (Oct. 27, 2020).
[10] Jeanne Batalova & Gregory Auclair, GREEN-CARD HOLDERS AND LEGAL IMMIGRATION TO THE UNITED STATES MIGRATIONPOLICY.ORG (2013), https://www.migrationpolicy.org/article/green-card-holders-and-legal-immigration-united-states-2 (last visited Apr 2, 2019).
[11] Dep't of Homeland Security, Annual Flow Report, U.S. Lawful Permanent Residents: 2019 (Oct. 27, 2020).
[12] Jie Zong Burrows Jeanne Batalova Jie Zong, Jeanne Batalova, and Micayla, FREQUENTLY REQUESTED STATISTICS ON IMMIGRANTS AND IMMIGRATION IN THE UNITED STATES MIGRATIONPOLICY.ORG (2019), https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states (last visited Apr 2, 2019).
[13] *Id.*
[14] *Id.*

status called "Conditional Permanent Residents". Conditional residence expires two years from the date it was granted. Before their conditional residence expires, the immigrant spouse must file an additional application, called a "Petition to Remove Conditions on Residence" (Form I-751) in order to extend their status and gain full lawful permanent residence. The reasoning behind conditional permanent residency is to prevent sham marriages, where someone marries another person just to get a green card, and then divorces shortly afterwards.

- The citizen or lawful permanent resident and the conditional resident are required to petition jointly in order to remove the conditions and grant the immigrant spouse lawful permanent residency. This joint petition must be filed before the two-year anniversary of the immigrant spouses' receipt of conditional residency demonstrating that the parties are still married. This joint filing requirement can be waived based on divorce, battering or extreme cruelty, bigamy, or extreme hardship.[15]

Interview Requirement

- Petition based on Marriage: in-person interviews are usually required.[16] In marriage based immigration cases there when the facts of the cases include one of the following an interview is generally required when:
    - The foreign national will be applying for the immigration benefit is inside the U.S.;
    - The marriage is a relatively new one;
    - The foreign national spouse is in removal proceedings; or
    - There is some questions about the marriage.
- However, the date of this interview could be years after the filing date. If an interview does occur, a decision could be rendered immediately or within three to four weeks after the interview.
- For parent, child, step-child., or sibling petitions: an interview is not usually scheduled unless the foreign national has negative history.

Divorce during the filing process

- If a divorce decree is issued in a family court case and that divorce becomes final before the date of the interview with the U.S. Citizenship and Immigration Service (USCIS), the immigrant spouse's visa petition will be denied.[17]

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[15] The battered spouse waiver was created to allow spouses who received conditional permanent residence who can prove that they have been subjected to battering or extreme cruelty by their citizen or lawful permanent resident spouse to gain full lawful permanent residency without having to wait two years and without the cooperation or knowledge of their abusive spouse. When there has been a divorce, battered immigrant spouses can file for a waiver based on either divorce or battering or extreme cruelty. Filing under the battered spouse waiver preserves the abused spouse's access to naturalization in three years, whereas filing for a divorce waiver results in a 5-year wait for naturalization. Additionally, battered spouse waiver applicants gain exemptions from deeming that resulted in greater access to public benefits than available to divorced spouses generally. *See more* Battered Spouse Waiver (BSW) Webinar and Training Materials (November 18, 2021) https://niwaplibrary.wcl.american.edu/bsw-training-materials. [For more information on the battered spouse waiver]

[16] 8 U.S.C. § 1154 (a) (8 CFR § 245.6)

[17] 8 U.S.C. § 1186a(b)

- If however, the immigrant spouse obtains conditional legal residence while married and divorce occurs later, the divorced immigrant spouse can seek a hardship waiver based on the divorce and may be able to obtain full lawful permanent residency.[18]
- If divorce happens after conditional residency is granted: the conditional resident must request a waiver of the joint filing requirement on their own, based on divorce. . An waiver (Form I-751)r can only be filed in the following circumstances[19]:
    - Deportation or removal would result in extreme hardship;
    - The marriage was entered into in good faith;
    - The marriage ended by annulment or divorce, and the immigrant spouse was not at fault in failing to file a timely petition;
    - During the marriage immigrant spouse applicant or their child or stepchild were battered or subjected to extreme cruelty committed by their U.S. citizen or lawful permanent resident spouse or parent.[20]
- If the divorce happens after the interview and before the application for lawful permanent residency is approved, the lawful permanent residency application will be denied.
- When there is an underlying family based (Form I-130) visa petition and the marriage terminates due to divorce prior to the grant of conditional residence or lawful permanent residence, the foreign national cannot be granted lawful permanent residence based on that family based I-130 petition. There would have to be a VAWA self-petition or other petition filed. However, if the individual entered the U.S. on a fiancé visa, there are limited scenarios where the application for lawful permanent residence (Form I-485) can still be approved.
- If a lawful permanent resident files a family based visa petition (Form I-130) for an immigrant spouse and the immigrant spouse's children are included. When divorce terminates the family based (I-130) visa application, this will also have an impact on the children's applications for legal immigration status. In General: For a marriage to be valid, a prior divorce must be valid under the laws of the jurisdiction granting the divorce.[21] In addition, if a foreign divorce was

[18] Abused immigrant spouses who have been subjected to battering or extreme cruelty by their citizen or lawful permanent resident spouse qualify, whether or not they are divorced, for a battered spouse waiver which can have advantages over a waiver based on divorce. *See generally,* Battered Spouse Waiver (BSW) Webinar and Training Materials (November 18, 2021) https://niwaplibrary.wcl.american.edu/bsw-training-materials.

[19] USCIS, REMOVING CONDITIONS ON PERMANENT RESIDENCE BASED ON MARRIAGE, https://www.uscis.gov/green-card/after-we-grant-your-green-card/conditional-permanent-residence/removing-conditions-on-permanent-residence-based-on-marriage (Last Updated: 09/17/2020)

[20] USCIS, REMOVING CONDITIONS ON PERMANENT RESIDENCE BASED ON MARRIAGE, https://www.uscis.gov/green-card/after-we-grant-your-green-card/conditional-permanent-residence/removing-conditions-on-permanent-residence-based-on-marriage (Last Updated: 09/17/2020); See more Memorandum from Donald Neufeld, USCIS Acting Associate Director, I-175 Filed Prior to Termination of Marriage (Apr. 09, 2009) https://www.uscis.gov/sites/default/files/document/memos/i-751_Filed_%20Prior_Termination_3apr09.pdf

[21] Chan v. Bell, 464 F.Supp. 125 (D.D.C. 1978); Matter of Hann, 18 I&N Dec. 196 (BIA 1982); Matter of Miraldo, 14 I&N Dec. 704 (BIA 1974); Matter of Karim, 14 I&N Dec. 417 (BIA 1973); Matter of Darwish, 14 I&N Dec. 307 (BIA 1973); Matter of Pearson, 13 I&N Dec. 152 (BIA 1969).

granted, to be valid it must be recognized under state law.[22] Generally, if a couple was neither physically present, nor domiciled at any time in the divorcing country, USCIS will not recognize the divorce.[23]

- Domicile vs. Residency in Divorce Cases: For the purposes of jurisdiction in divorce cases residence can be established regardless the immigration status of the party seeking divorce. The Nevada Supreme Court ruled that residence in the state is all that is needed for divorce jurisdiction which requires mere residence (physical presence), but not domicile (which involves an intent to remain in the state). .[24]

Affidavit of support[25]

- The affidavit of support is a legally enforceable contract that the U.S. citizen or lawful permanent resident sponsor submits to USCIS promising to support the intending immigrant family member so that they are not likely to become a public charge. The sponsor's responsibility usually lasts until the family member or other individual either becomes a U.S. citizen, or is credited with 40 quarters of work (usually 10 years).[26]
- Importantly, the contractual commitment of the sponsor who signs an affidavit of support does not end if the sponsor and the sponsored immigrant were married and divorce, become estranged, or if the sponsor loses contact with the sponsored immigrant.[27] This obligation of support remains unchanged, even when a premarital agreement or a divorce agreement attempt to eliminate the responsibility.[28]

3. DIVORCE FROM A UNITED STATES CITIZEN

When a United States citizen marries[29] an immigrant, the U.S. citizen is authorized to file a family sponsored visa petition[30] for the immigrant spouse and any stepchildren. USCIS receives and adjudicates these applications[31]. If the U.S. Citizen and immigrant spouse have been married for less than two years on the date of their interview, the immigrant spouse receives conditional legal residency and goes through the same process as stated above. However, there are some additional rules that can apply depending on the facts of the case when U.S. citizens divorce noncitizen spouses:

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[22] Matter of Weaver, 16 I&N Dec. 730, 733 (BIA 1979) [where both parties divorced in the Dominican Republic but were domiciled in the Bahamas at the time, it was necessary to look to Bahamian law to determine whether the divorce was valid even if it was valid under Dominican law]
[23] Matter of Ma, 15 I&N Dec. 70, 71 (BIA 1974).
[24] *Senjab v. Alhulaibi*, 497 P.3d 618 (Nev. 2021)
[25] *See* Sarah Hampton, et al., A*ffidavits of Support and Enforceability Bench Card*, NIWAP 8 (Sept. 30, 2021), https://niwaplibrary.wcl.american.edu/pubs/affidavits-of-support-bench-card
[26] U.S. CITIZENSHIP & IMMIGR. SERVS., AFFIDAVIT OF SUPPORT (Mar. 19, 2021), https://www.uscis.gov/green-card/green-card-processes-and-procedures/affidavit-of-support
[27] Sarah Hampton, et al., A*ffidavits of Support and Enforceability Bench Card*, NIWAP 8 (Sept. 30, 2021), https://niwaplibrary.wcl.american.edu/pubs/affidavits-of-support-bench-card; *See also* U.S. CITIZENSHIP & IMMIGR. SERVS., OMB No. 1615-0075, INSTRUCTIONS FOR AFFIDAVIT OF SUPPORT UNDER SECTION 213A OF THE INA 13 (2021), https://niwaplibrary.wcl.american.edu/pubs/i-864-affidavit-of-support-instructions; *Affidavit of Support: Responsibilities as a Sponsor*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Mar. 19, 2021), https://www.uscis.gov/green-card/green-card-processes-and-procedures/affidavit-of-support.
[28] *See, e.g.*, Erler v. Erler, 824 F.3d 1173, 1177 (9th Cir. 2016) ("[U]nder federal law, neither a divorce judgment nor a premarital agreement may terminate an obligation of support.").
[29] INA §216(h)(3) 8 U.S.C. § 1186a(h)(3)
[30] This family-based visa petition uses form I-130 and parties in court may refer to this as an I-130 visa petition.
[31] 8 CFR § 1.2

- **Family-related visas for fiancé(e)s, spouses, and children of U.S. citizens:** Engagement to a U.S. citizen allows for admission to the U.S. on a K-1 fiancé(e) visa, provided the fiancé(e) marries the citizen spouse within 90-days of entering the U.S. on a fiancé(e) visa. When a marriage takes place abroad between a U.S. citizen and a foreign-born spouse, the spouse can be granted a K-3 visa and the foreign-born spouse's children can be granted K-4 visas as dependents of the foreign-born spouse.

- **Fiancé(e) K-1 visas divorce:** If the parties are divorced after marrying within the 90-day period and a lawful permanent residency application was filed for the fiancé(e) K-1 visa holder spouse, the K-1 may still obtain lawful permanent residency based on the pending application.[32] However, the K-1 fiancé visa holder spouse may be granted lawful permanent residency only if the I-864 affidavit of support (Form I-864) was filed or remains filed by the original citizen spouse who filed the fiancé visa and the lawful permanent residency applications. There are exceptions to this required based on the death of the spouse or abuse.[33]
- **VAWA Self-petition:** A VAWA self-petitioner has two years after a divorce to file their self-petition, provided they demonstrate a connection between the battering or extreme cruelty and the divorce.[34] This connection is most often documented in pleadings filed in the divorce action and through court findings regarding battering or extreme cruelty. Once the VAWA self-petition has been filed, the statute permits the VAWA self-petitioner to be divorced after the petition is filed without the need to demonstrate a connection between battering/extreme cruelty and the divorce.[35]
- **"Stepchild" status survives divorce:** In the context of the Violence Against Women Act "stepchild" status survives divorce. Divorce or death between the natural parent and the abusive stepparent does not cut a stepchild victim off from VAWA immigration relief, including self-petitioning.[36]
- **Ability to Apply for Naturalization After 3 Years:** In general, all naturalization applicants filing based on marriage to a U.S. citizen must continue to be the spouse of a U.S. citizen from the time of filing the naturalization application until the applicant becomes naturalized by taking the Oath of Allegiance. An applicant is ineligible to naturalize as the spouse of a U.S. citizen after three years as a lawful permanent resident if the divorce or annulment occurs before or after the naturalization application is filed.[37] When the marriage to a U.S. citizen is terminated by

[32] Matter of Sesay, 25 I&N Dec. 431, 441-44 (BIA 2011) [K-1 who married within 90 days, had a child with petitioner and divorced more than 2 years after marriage but prior to the time that AOS was adjudicated, may still AOS even if the AOS is pending outside the CR time period]. See also Choin v. Mukasey, 537 F.3d 1116 (9th Cir. 2008) [K-1 married her USC fiancée, filed for AOS, but divorced within 2 years and before the AOS was approved].
[33] Matter of Song, 27 I&N Dec. 488 (BIA 2018). See more IRA J. KURZBAN, KURZBAN'S IMMIGRATION LAW SOURCEBOOK, 1330 (17th ed. 2020).
[34] INA §204(a)(1)(A)(iii)(II)(aa)(CC)(ccc); 8 U.S.C. § 1154 (a)(1)(A)(iii)(II)(aa)(CC)(ccc); INA §204(a)(1)(B)(ii)(II)(aa)(CC)(bbb); 8 U.S.C. § 1154 (a)(1) (B)(ii)(II)(aa)(CC)(bbb).
[35] INA §204(a)(1)(A)(vi); 8 U.S.C. § 1154 (a)(1)(A)(vi); INA §204(a)(1)(B)(v); 8 U.S.C. § 1154 (a)(1) (B)(v).
[36] Arguijo v. United States Citizenship & Immigration Services, 991 F.3d 736 (7th Cir. 2021).
[37] 8 CFR 319.1(b)(2)(i) and 8 CFR 319.2(c). See more, UCSIS, POLICY MANUAL CHAPTER 2 - MARRIAGE AND MARITAL UNION FOR NATURALIZATION, https://www.uscis.gov/policy-manual/volume-12-part-g-chapter-2 (Last updated Dec. 09, 2021)

divorce or annulment before the immigrant spouse naturalize, the immigrant spouses loses eligibility to naturalize as the spouse of a U.S. citizen and must wait five years to file their naturalization application. Congress created exceptions to this requirement for battered immigrant spouses abused by U.S. citizen spouses. Whether an immigrant victim spouse qualifies for this exception depends on form of immigration relief the victim was granted. The following immigrant abused immigrant spouses are eligible to naturalize in three years despite the termination of their marriage to a U.S. citizen: [38]

- VAWA self-petitioners;
- VAWA cancellation of removal and VAWA suspension of deportation recipients; and
- Battered spouse waiver recipients.
- Note: Immigrant spouses of U.S. citizens who received lawful permanent residency based on their citizen spouse's family based visa petition must remain married to the citizen spouse through naturalization to be able to naturalize after 3 years as a lawful permanent resident. Divorce, before naturalization, makes the non-naturalized immigrant spouse have to wait for five years to be able to naturalize.

4. DIVORCE FROM A LAWFUL PERMANENT RESIDENT

The process for receiving a green card as a spouse to a legal permanent resident is fundamentally the same as marriage to a U.S. citizen.

- Marriage to a legal permanent resident allows for admission to the U.S. as a V-1 visa holder spouse[39] and confers V-3 visa status to dependents children of the immigrant spouse.
- If one is in possession of a V-1 visa at the time of divorce, the status shall terminate in 30 days from when the divorce from the legal permanent resident becomes final.[40]
- Status termination can be halted pending appeal, in which case dismissal of an appeal would start the 30-day termination clock.
- Immigrant spouses married to lawful permanent residents have to be in V-1 status at the time an application for lawful permanent residency is filed.

5. DIVORCE FROM IMMIGRANT VISA HOLDER

There are great number of immigrant and non-immigrant visas available. The type of visa is defined by immigration law and relates to the purpose of the travel. Visas are divided by different purposes such as, employment-based, student visas, temporary visas, diplomatic, international organization, foreign government officials, personal employee of foreign member government, artists, scientist, etc. The person who receives one of these visas is the called the principal visa holder. There are additional dependent visas designed for spouses and children of the principal visa holder. Dependent visas allow the dependent visa holder to stay the U.S. along with the principal visa holder as long as the

[38] INA §319(a); 8 U.S.C. § 1430(a); USCIS Clarification of Classes of Applicants Eligible for Naturalization under Section 3 19(a) of the Immigration and Nationality Act (INA), as amended by the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA). Pub. L. 106-386 https://niwaplibrary.wcl.american.edu/pubs/clarification-eligible-applications.
[39] 8 C.F.R. § 101.15(a)
[40] 8 C.F.R. § 214.15(j)(4)

visa status of the principal visa holder is valid. Dependent visa holders have different privileges, such as employment and study authorization; depending on the specific type of visa the principal visa holder is granted.[41]

- In case of divorce between a visa holder and a dependent visa recipient spouse the divorce ends the spousal relationship and USCIS will revoke the dependent spouse's visa. The dependent immigrant spouse would be out of status. Once termination of the marital relationship is final, there is no valid relationship upon which the dependent immigrant visa is based. The dependent immigrant spouse will be out of status without a valid immigration status.

- The time the immigrant spouse has to leave the United States after the divorce is unclear.[42] The dependent immigrant spouse is out of legal immigration status, but is not accruing unlawful presence until the legal immigration status ends. This means that the immigrant spouse often has a little time to pursue a different immigraiton status option or leave the U.S. without any long-lasting immigration consequences.

- Whether a the step-parent/step-child relationship continues past divorce depends on

    - Whether the family relationship between the step-child and step-parent continues to exist as a matter of fact between the step-parent and the step-child;[43] or

    - Whether the stepchild qualifies for immigration relief as a VAWA a self-petitioner.[44]

- Divorce, in most case, will not affect status of natural-born children.

- **T-visa revocation of status:** DHS may issue a notice of intent to revoke to the T-2 visa of a dependent immigrant spouse who has a final divorce from the trafficking victim T-1 visa holder.[45]

6. DIVORCE OF REFUGEE AND ASYLUM SEEKERS

Unlike other types of immigrants, asylees and refugees are very unlikely to ever be removed from the United States once they are granted legal immigration status as asylees or refugees.

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[41] *See* Immigration Status: Work Authorization, Public Benefits, and Ability to Sponsor Children https://niwaplibrary.wcl.american.edu/pubs/fam-chart-immstatus. [For further information by type of visa on work authorization, whether the visa requires sponsorship, and whether visa holders can obtain visas for their spouse and children]

[42] There is some lack of clarity about when an immigrant is out-of-status and when they begin accruing unlawful presence.

[43] Matter of Mowrer, 17 I. & N. Dec. 613 (BIA 1981)

[44] Arguijo v. United States Citizenship & Immigration Services, 991 F.3d 736 (7th Cir. 2021) [Holding that in the case of immigrant stepchildren who were battered or subjected to extreme cruelty by their citizen or lawful permanent resident step-parent who qualify to file VAWA self-petitions, the step-parent/step-child relationship does not terminate with divorce. This ruling should affect all VAWA self-petitioners defined in INA 101(a)(51) as well as VAWA cancellation of removal and suspension of deportation applicants.]

[45] IRA J. KURZBAN, KURZBAN'S IMMIGRATION LAW SOURCEBOOK, 1347 (17th ed. 2020).

Immigration laws, as well as international laws like the Convention Against Torture, generally prohibit returning refugees and asylees to their home country if they are likely to face persecution or abuse.[46]

Refugees

- Family members/dependents of a person who has been granted legal immigration status as a refugee may apply for refugee status as the spouse, child or stepchild of a refugee in accordance with their right to family unity.[47]

- Individuals who obtain this derivative refugee status enjoy the same rights and entitlements as other recognized refugees, and retain the status in spite of the subsequent dissolution of the family through separation, divorce, death, or the fact that children reach the age of majority.[48]

- Eligibility for derivative family member refugee status under the right to family unity must be determined through a Family Unit Interview. The purpose of the interview is to obtain sufficient information to assess the existence and nature of a family or dependency relationship between the principal applicant and the family members applying for derivative status.[49] In general, young children should not have a separate Family Unit interview.[50]

Asylees

Family law rulings in divorce cases can have a huge impact on what path, if any, a person who has been granted asylum as a family member of an asylee has a path to lawful permanent residency and citizenship. If an asylee has included their spouse or stepchild in their asylum application, divorce prior to the grant of asylum would cut off the spouse and stepchild from asylum. Once the family members have been granted asylum, the law requires they maintain their relationship as a spouse or stepchild of a primary applicant asylee spouse or stepparent until the family member asylee can file for and be granted lawful permanent residency status. Family court rulings in divorce and annulment cases that terminate the relationship between an asylees and the asylee's spouse or stepchild cut off the spouse or stepchild's ability to gain lawful permanent residency based on their marriage to the asylee. ,

- Once the dependent spouse receives asylum together with the primary spouse who is the main asylum applicant, they permanently have asylum status.

[46] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, Annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987.
[47] UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, PROCEDURAL STANDARDS FOR REFUGEE STATUS DETERMINATION UNDER UNHCR'S MANDATE: UNIT 5: PROCESSING CLAIMS BASED ON THE RIGHT TO FAMILY UNITY, https://www.unhcr.org/publications/legal/43170ff81e/procedural-standards-refugee-status-determination-under-unhcrs-mandate.html (last visited Apr 2, 2019).
[48] *Id.*
[49] *Id.*
[50] *Id.*

- An asylee spouse who is divorced from the principal asylee is no longer a spouse of the principal and is no longer eligible to obtain lawful permanent residency through the marriage to the asylee.[51]

- If there is a divorce before the dependent asylee spouse attains lawful permanent residency, the divorce revokes the possibility of the dependent asylee spouse acquire lawful permanent residency.[52]

- The divorce does not revoke the asylum status of the dependent asylee spouse. The dependent spouse would need to another path to lawful permanent residency. One potential option would be for the asylee spouse to file their own application for Nunc Pro Tunc asylum.[53]

- Nunc Pro Tunc Asylum:

    - "Nunc pro tunc," meaning "now for then," refers to cases where a dependent asylee spouse who is ineligible to attain lawful permanent residency due to divorce may qualify to file for and be granted asylum in their own right and the grant may be dated as of the date of the original principal's asylum grant.[54]

    - In many cases, derivative asylees who divorce must first file a new asylum application (Form I-589) with their local Asylum Office before applying for a green card. New asylum applications can be filed by derivative dependent spouse asylees requesting to be considered as principal asylum applicants.

    - The Asylum Office will then schedule an interview that will be used to verify the identity of the person and verify whether they are physically present in the United States. The Asylum Office will also verify that the asylee spouse is not in removal or deportation proceedings and is not subject to any mandatory bars to being granted asylum. Generally, the dependent asylee spouse does not need to independently establish eligibility for asylum. However, the Asylum Office may interview the asylee spouse about the merits of their spouse's original asylum claim in certain circumstances.

[51] U.S. CITIZENSHIP AND IMMIGRATION SERVICES, 7 ELIGIBILITY REQUIREMENTS - CHAPTER 2, PART M, VOLUME 7 | POLICY MANUAL | USCIS (2019), https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume7-PartM-Chapter2.html (last visited Apr 2, 2019).
[52] *Id.*
[53] *Id.*
[54] *Id.*