

MARRIAGE AFTER IMFA

All you need is love?

By Julie C. Nemecek and Kenneth J. Robinson

Love conquers all things; let us too surrender to Love. Vergil (70–19 B.C.) *Eclogues*, X, l. 69.

Vergil may have been right, that is before November 10, 1986 when Congress enacted the Immigration Marriage Fraud Amendments of 1986 (IMFA), which were later amended by the Immigration Act of 1990 (IMMACT90). Created to provide safeguards against immigration marriage fraud, IMFA imposed substantial hurdles on noncitizens, or “aliens,” and their US citizen or lawful permanent resident spouses.¹ Couples must now overcome a number of obstacles before the alien spouse will be able to become a U.S. citizen or legal permanent resident and spend the rest of his or her life in the U.S.

Once married, by way of a series of immigration filings, the U.S. citizen or green card holder must show that she has the legal capacity to enter into the marriage; the marriage is bona fide – that is, it was not entered into solely for immigration purposes; and that there is no criminal, health or economic reason to prevent admission to the U.S. for the alien spouse. In addition, the petitioning spouse must provide an affidavit of support showing the immigrant will not live in poverty.

Prior to IMFA, an alien could obtain a ten-year “green card” fairly easily through marriage to a U.S. citizen. Congress believed an overly simplified path to a green card through marriage to a citizen resulted in sham marriages. An alien and U.S. citizen could enter into a sham marriage – apply for and obtain a green card and be divorced all within a year.

Putting an end to what was once thought of as a quick fix to obtaining legal status, IMFA imposed a two-year conditional residence status for certain aliens who marry fewer than two years before obtaining the green card.² This means the alien is given a two-year green card and is considered a conditional resident (CR). CRs have the same rights and privileges of permanent green card holders. They can accrue time towards naturalization (citizenship) eligibility, may reside legally in the U.S., have work authorization and can file petitions for their relatives.

However, in order to continue to live in the U.S. as a lawful permanent resident after two years, CRs must once again prove the bona fides of their marriage. Within ninety days prior to the second anniversary of the CRs obtaining his or her green card, the CR and his or her spouse must jointly file to remove the conditions on the CRs residency.³ If the petition is not filed within the ninety-day window and good cause for failure to file timely is not shown, the alien’s residence automatically terminates and removal proceedings against the alien may commence.⁴

The requirement of a joint filing may be waived in three

situations: (1) where the removal of the alien would result in extreme hardship; (2) where the alien entered into the marriage in good faith, but the marriage was terminated other than by death of the spouse; or (3) where the alien entered into the marriage in good faith and the couple remains married, but the alien spouse or child was subjected to battery or extreme cruelty by the U.S. citizen or permanent resident spouse.⁵

This petition must be supported by evidence which may include the following: documentation showing the joint ownerships of property; lease showing joint tenancy of a common residence; birth certificates of children born to the marriage; affidavits of third parties having knowledge of the bona fides of the marriage; etc.⁶

Typically, evidence submitted with this filing includes contracts for home mortgages and car loans, statements from joint bank accounts; leases; bills in both the alien and his spouse’s name; documentation establishing joint medical and life insurance; wills; copies of joint credit cards and memberships cards; pictures of the couple with family and/or friends.

Once a petition is filed, Immigration will give each petition a fraud probability factor. If the government

does not suspect fraud, the petition will be approved. On the other hand, if the case does not pass the initial fraud test, Immigration will conduct an interview.

This second interview is similar to the one initially conducted when the alien first applied for the green card. The officer conducting the interview will essentially engage a “smell test” to determine if the marriage is a sham. In addition to reviewing the documentation submitted, the officer will also look at differences in the couple’s ages, races, religions, and language abilities, and if the officer suspects a sham marriage, he or she may interview the alien and U.S. spouse separately, asking them similar questions to determine if their responses match up.

If Immigration determines the marriage was valid in the jurisdiction it took place, was entered into in good faith; was not judicially annulled or terminated during the alien spouse’s two-year period of CR status; and no fee or other consideration was given to induce the marriage, Immigration must approve the petition and grant the alien a full green card.⁷



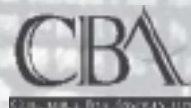
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If Immigration denies the petition, the alien spouse will be ordered to surrender the green card and authorization to work will be terminated as of the date the written decision is issued.⁸ The decision cannot be appealed through Immigration, however, a motion to reopen or reconsider may be filed.⁹ If the alien is placed in removal proceedings, he or she may seek review of the denial by an Immigration judge. In removal proceedings, the government will have the burden of establishing by a preponderance of the evidence that the contents of the I-751 petition are not true.¹⁰

To deter marriage fraud, IMFA imposed harsh penalties for sham marriages. Aliens who enter into sham marriages for the purpose of evading immigration laws are barred from future immigration. Both the alien and U.S citizen or legal permanent resident spouse may be subject to criminal penalties, including a term of imprisonment of up to five years and/or a fine of up to \$250,000.¹¹

Perhaps now, understanding the IMFA, one has a new appreciation for the words of the great philosophers:

*There's nothing you can do that can't be done.
Nothing you can sing that can't be sung.
Nothing you can say but you can learn how to play the game.
It's easy.*

*Nothing you can make that can't be made.
No one you can save that can't be saved.
Nothing you can do but you can learn how to be you in time.
It's easy.*

*All you need is love (All together, now!)
All you need is love. (Everybody!)
All you need is love, love.*

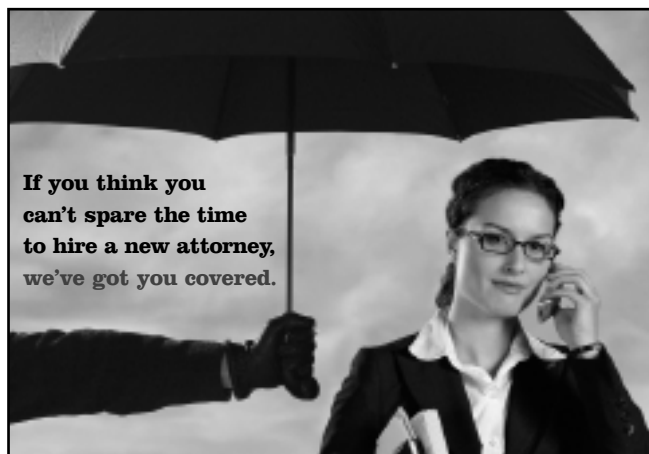
Love is all you need (love is all you need) . . .

. . . Except when it comes to immigration.

1. Pub. L. No. 99-639, 100 Stat. 3537 (codified as amended at 8 USC §1186a).
 2. INA §216(a)(1).
 3. INA §216(d)(2)(A).
 4. INA §216(c)(2).
 5. INA §216(c)(4).
 6. 8 CFR §216.4(a)(5)(i)-(vi).
 7. See *Id.*
 8. 8 C.F.R. §216.4(d).
 9. 8 C.F.R. §103.5
 10. See *Id.*, at Fn 11.
 11. INA §275(c).
 12. *The Beatles, All You Need Is Love, on Magical Mystery Tour (Parlophone/EMI July 1967).*



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