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IMMIGRATION INSIGHTS

A Green Card based on a marriage less than two years old must be renewed with a Petition to Remove Conditions

Failure to file the Petition on time can jeopardize your Permanent Residence and could trigger a deportation case

If the marriage has not worked out, there are options to file the Petition with a "waiver" which may allow the foreign national souse to keep their green card

"Conditional" Green Cards and the 2 Year Rule Removing Conditions on Residence

Getting a green card (Permanent Residence Card) based on marriage to a U.S citizen is a large step in the process of permanent residence, but it is not the final step. If the marriage is less than two years old at the time status is given, the green card is typically "conditional" and the marriage must be re-evaluated before residence is finally made permanent. The process is called a Petition to Remove Conditions on Residence, and must be done during the ninety days immediately prior to the second anniversary of the date you were granted conditional residence status. You will know when this is by looking at the date on your conditional Permanent Resident Card next to the "EXPIRES" notation. You have to file your petition in the ninety days before the EXPIRES date on your card.

If you are required to file the Petition to Remove Conditions, but do not do so, the consequences can be severe. If the petition is not filed on time your permanent residence will be considered revoked as of the date your two year green card expires. At that point you are vulnerable to removal, or deportation.

In most cases the petition process is fairly straightforward. If the marriage has been successful and couple is still married, they will file the petition jointly, and show evidence that their marriage is genuine. This is essentially the same type of evidence used to establish the marriage in the first place (showing lawful marriage documents, evidence of joint accounts, cohabitation, children born to the marriage, etc.,) but should be updated up through to the present.

Things get more complicated when the marriage has not been successful and separation or divorce are part of the picture. If the breakdown of the marriage looks to be permanent, the first question may be whether the foreign national spouse is ready to give up the marriage and also give up residing in the U.S. In many cases this is neither desirable (for example, where there may be child custody issues) or practical (for example, where the foreign national spouse is involved in an ongoing career or educational program).

The simple fact is that many marriages do not last "til death do us part" and some of these do not last through the first two years. It is important to know that the re-

evaluation of the marriage for immigration purposes is not (and should not be) aimed at determining if the couple has managed to make a long-term success of their marriage. The sole purpose of the review is to confirm that the marriage was originally entered into in good faith, and not for the purposes of evading the U.S. immigration laws.

The "Good Faith Waiver" is the most commonly used of the four waiver options available

The immigration rules provide various ways to accomplish this, and these include four possible waivers of the joint filing requirement. The most commonly used waiver is called the "Good Faith Waiver" and it simply states that the foreign national spouse entered the marriage in good faith, but the marriage was later terminated due to divorce or annulment. The other waivers cover situations where the U.S citizen spouse dies before the two year period, where there has been battering or extreme cruelty, and where extreme hardship will result from the loss of permanent residence.

Although the Good Faith Waiver is most commonly used, and looks like a straightforward solution, it also has some complications. Notice that the wording says that the marriage "was later terminated" – the immigration service has long taken the view that this means the divorce must be final before the waiver may be applied for. If the couple was separated but not yet divorced, or if the divorce had been filed but not finalized, no waiver was deemed available, and the likely result would have been a denial of the petition.

Timing issues are critical, especially if a divorce is pending when the Petition is due. Be sure you understand the time line and evidence requirements clearly

A recent policy development has provided a partial solution to this dilemma, and a procedure is now in place to allow for filing for the good faith waiver even though the divorce is not yet final. An extension of time may be granted to the petitioner on request, and a final divorce document may be filed thereafter. If this procedure is relevant to your situation, you should be very sure you understand the requirements and timeline of this approach before going forward.