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IMMIGRATION INSIGHTS

The U.S. Supreme Court has ordered federal recognition of same-sex marriages.

As a federal agency, U.S. Citizenship & Immigration Services, will now provide equal access to same-sex couples and families.

Hawai'i now recognizes same-sex marriage and has equalized the licensing and registration process.

International same-sex couples will no longer need to leave Hawai'i in order to have their marriage performed.

All the standard USCIS requirements regarding documents and evidence will apply, so be sure you know what is needed before you file.

## SAME-SEX MARRIAGE AND IMMIGRATION IN HAWAI'I

On June 26, 2013, the United States Supreme Court decision in *United States v. Windsor*, opened the federal government to the recognition and acceptance of same-sex marriages. In the United States, regulation of marriage has historically been a function of state law, and the federal government and other states simply accepted each states' terms and recognized any marriage that was lawful in the state where it was made. In the Windsor case, the Supreme Court upheld that idea, and found that there was no legitimate reason for the federal government to discriminate against same-sex marriages that the states had determined to be legal.

The immediate result of this historic change for same-sex international couples is that U.S. Citizenship and Immigration Services will now process same-sex marriage-based applications and petitions on the same basis as it does for any other marriage. In other words, if you are in a committed same-sex relationship with a partner who is a citizen of another country, you can now expect to be treated with equality in the immigration process.

On December 2, 2013, the State of Hawai'i became the fifteenth state to register and recognize same-sex marriages. This means that same-sex couples who want to obtain immigration benefits for an international partner may now have their marriage ceremony performed here in Hawai'i without the need to go elsewhere.

As with any new law or ruling, there is still some uncertainty in how this change will be implemented. However, there are some things you need to know to move forward with an application or petition.

A first point to consider is that while the Windsor case is a big step forward, and allows same-sex couples equal access to legal procedures, potential applicants should be aware that there is no "special rule" for same-sex couples, and all of the existing standard requirements will apply. For example, all couples must show financial responsibility for the support of the foreign spouse, provide a full set of documents, and present evidence of a "bona fide marriage" showing that the marriage was not made simply for the purpose of applying for immigration benefits.

Social and cultural norms in this area are in flux, and it may be that some types of evidence that are commonly available to straight couples will be difficult for some same-sex couples to obtain. For example, evidence that the marriage is known to and accepted by the couples' families will not be appropriate in all cases. Also, some same-sex couples will not have had an opportunity to file joint tax returns, a common type of relationship evidence.

If you are unsure about the process you should consult an immigration attorney about the current state of law and practice. As this area of relationship-based practice develops, a great many couples stand to gain legal recognition and support for their relationships. Now may be the time to make the commitment. For more information visit [www.migrationcounsel.com](http://www.migrationcounsel.com) or call 808 695 3560.